

ALEXANDER A. KRIVENKO, PETITIONER AND APPELLANT, VS. THE REGISTER OF DEEDS, CITY OF MANILA, RESPONDENT AND APPELLEE.*G.R. No. L-630. November 15, 1947*

Ponente: MORAN, C.J.

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MORAN, C.J.:

Alexander A. Krivenko, alien, bought a residential lot from the Magdalena Estate, Inc., in December of 1941, the registration of which was interrupted by the war. In May, 1945, he sought to accomplish said registration but was denied by the register of deeds of Manila on the ground that, being an alien, he cannot acquire land in this jurisdiction. Krivenko then brought the case to the fourth branch of the Court of First Instance of Manila by means of a consulta, and that court rendered judgment sustaining the refusal of the register of deeds, from which Krivenko appealed to this Court.

There is no dispute as to these facts. The real point in issue is whether or not an alien under our Constitution may acquire residential land.

It is said that the decision of the case on the merits is unnecessary, there being a motion to withdraw the appeal which should have been granted outright, and reference is made to the ruling laid down by this Court in another case to the effect that a court should not pass upon a constitutional question if its judgment may be made to rest upon other grounds. There is, we believe, a confusion of ideas in this reasoning. It cannot be denied that the constitutional question is unavoidable if we choose to decide this case upon the merits. Our judgment can not to be made to rest upon other grounds if we have to render any judgment at all. And we cannot avoid our judgment simply because we have to avoid a constitutional question. We cannot, for instance, grant the motion with drawing the appeal only because we wish to evade the constitutional issue. Whether the motion should be, or should not be, granted, is a question involving different considerations now to be stated.

According to Rule 52, section 4, of the Rules of Court, it is discretionary upon this Court to grant a withdrawal of appeal after the briefs have been presented. At the time the motion for withdrawal was filed in this case, not only had the briefs been presented, but the case had already been voted and the majority decision was being prepared. The motion for withdrawal stated no reason whatsoever, and the Solicitor General was agreeable to it. While the motion was pending in this Court, came the new circular of the Department of Justice, instructing all register of deeds to accept for registration all transfers of residential lots to aliens. The herein respondent-appellee was naturally one of the registers of deeds to obey the new circular, as against his own stand in this case which had been maintained by the trial court and firmly defended in this Court by the Solicitor General. If we grant the withdrawal, the result would be that petitioner-appellant Alexander A. Krivenko wins his case, not by a decision of this Court, but by the decision or circular of the Department of Justice, issued while this case was pending before this Court. Whether or not this is the reason why appellant seeks the withdrawal of his appeal and why the Solicitor General readily agrees to that withdrawal, is now immaterial. What is material and indeed very

important, is whether or not we should allow interference with the regular and complete exercise by this Court of its constitutional functions, and whether or not after having held long deliberations and after having reached a clear and positive conviction as to what the constitutional mandate is, we may still allow our conviction to be silenced, and the constitutional mandate to be ignored or misconceived, with all the harmful consequences that might be brought upon the national patrimony. For it is but natural that the new circular be taken full advantage of by many, with the circumstance that perhaps the constitutional question may never come up again before this court, because both vendors and the vendees will have no interest but to uphold the validity of their transactions, and very unlikely will the register of deeds venture to disobey the orders of their superior. Thus, the possibility for this court to voice its conviction in a future case may be remote, with the result that our indifference of today might signify a permanent offense to the Constitution.

All these circumstances were thoroughly considered and weighed by this Court for a number of days and the legal result of the last vote was a denial of the motion withdrawing the appeal. We are thus confronted, at this stage of the proceedings, with our duty to decide the case upon the merits, and by so doing, the constitutional question becomes unavoidable. We shall then proceed to decide that question.

Article XIII, section 1, of the Constitution is as follows:

"Article XIII.—Conservation and utilization of natural resources.

"Section 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 the limit of the grant."

The scope of this constitutional provision, according to its heading and its language, embraces all lands of any kind of the public domain, its purpose being to establish a permanent and fundamental policy for the conservation and utilization of all natural resources of the Nation. When, therefore, this provision, with reference to lands of the public domain, makes mention of only agricultural, timber and mineral lands, it means that all lands of the public domain are classified into said three groups, namely, agricultural, timber and mineral. And this classification finds corroboration in the circumstance that at the time of the adoption of the Constitution, that was the basic classification existing in the public laws and judicial decisions in the Philip pines, and the term "public agricultural lands" under said classification had then acquired a technical meaning that was well-known to the members of the Constitutional Convention who were mostly members of the legal profession.

As early as 1908, in the case of *Mapa vs. Insular Government* (10 Phil., 175, 182), this Court said that the phrase "agricultural public lands" as defined in the Act of Congress of July 1, 1902, which phrase is also to be found in several sections of the Public Land Act (No. 926), means "those public lands acquired from Spain which are neither mineral nor timber lands." This definition has been followed in a long line of decisions of this Court. (See *Montano vs. Insular Government*, 12 Phil., 572; *Santiago vs. Insular Government*, 12 Phil., 593; *Ibañez de Aldecoa vs. Insular Government*, 13 Phil., 159; *Ramos vs. Director of Lands*, 39 Phil., 175; *Jocson vs. Director of Forestry*, 39 Phil., 560; *Ankron vs. Government of the Philippines*, 40 Phil., 10.) And with respect to residential lands, it has been held that since they are neither mineral nor timber lands, of necessity they must be classified as

agricultural. In *Ibañez de Aldecoa vs. Insular Government* (13 Phil., 159, 163), this Court said:

"Hence, any parcel of land or building lot is susceptible of cultivation, and may be converted into a field, and planted with all kinds of vegetation; for this reason, where land is not mining or forestal in its nature, it must necessarily be included within the classification of agricultural land, not because it is actually used for the purposes of agriculture, but because it was originally agricultural and may again become so under other circumstances; besides, the Act of Congress contains only three classifications, and makes no special provision with respect to building lots or urban lands that have ceased to be agricultural land."

In other words, the Court ruled that in determining whether a parcel of land is agricultural, the test is not only whether it is actually agricultural, but also its susceptibility to cultivation for agricultural purposes. But whatever the test might be, the fact remains that at the time the Constitution was adopted, lands of the public domain were classified in our laws and jurisprudence into agricultural, mineral, and timber, and that the term "public agricultural lands" was construed as referring to those lands that were not timber or mineral, and as including residential lands. It may safely be presumed, therefore, that what the members of the Constitutional Convention had in mind when they drafted the Constitution was this well-known classification and its technical meaning then prevailing.

"Certain expressions which appear in Constitutions, * * * are obviously technical; and where such words have been in use prior to the adoption of a Constitution, it is presumed that its framers and the people who ratified it have used such expressions in accordance with their technical meaning." (11 Am. Jur., sec. 66, p. 683.) Also *Calder vs. Bull*, 3 Dall. [U. S.], 386; 1 Law. ed., 648; *Bronson vs. Syverson*, 88 Wash., 264; 152 P., 1039.)

"It is a fundamental rule that, in construing constitutions, terms employed therein shall be given the meaning which had been put upon them, and which they possessed, at the time of the framing and adoption of the instrument. If a word has acquired a fixed, technical meaning in legal and constitutional history, it will be presumed to have been employed in that sense in a written Constitution." (*McKinney vs. Barker*, 180 Ky., 526; 203 S. W., 303; L. R. A., 1918E, 581.)

"Where words have been long used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute in which they are used, the rule of construction requires that the words used in such statute should be construed according to the sense in which they have been so previously used, although the sense may vary from the strict literal meaning of the words." (II Sutherland, *Statutory Construction*, p. 758.)

Therefore, the phrase "public agricultural lands" appearing in section 1 of Article XIII of the Constitution must be construed as including residential lands, and this is in conformity with a legislative interpretation given after the adoption of the Constitution. Well known is the rule that "where the Legislature has revised a statute after a Constitution has been adopted, such a revision is to be regarded as a legislative construction that the statute so revised conforms to the Constitution." (59 C. J., 1102.) Soon after the Constitution was adopted, the National Assembly revised the Public Land Law and passed Commonwealth Act No. 141, and sections 58, 59 and 60 thereof permit the sale of residential lots to Filipino citizens or to associations or corporations controlled by such citizens, which is equivalent to a solemn declaration that residential lots are considered as agricultural lands, for, under the Constitution, only agricultural lands may be alienated.

It is true that in section 9 of said Commonwealth Act No. 141, "alienable or disposable public lands" which are the same "public agricultural lands" under the Constitution, are classified into agricultural, residential, commercial, industrial and for other purposes. This simply means that the term "public agricultural lands" has both a broad and a particular meaning. Under its broad or general meaning, as used in the Constitution, it embraces all lands that are neither timber nor mineral. This broad meaning is particularized in section 9 of

Commonwealth Act No. 141 which classifies "public agricultural lands" for purposes of alienation or disposition, into lands that are strictly agricultural or actually devoted to cultivation for agricultural purposes; lands that are residential; commercial; industrial; or lands for other purposes. The fact that these lands are made alienable or disposable under Commonwealth Act No. 141, in favor of Filipino citizens, is a conclusive indication of their character as public agricultural lands under said statute and under the Constitution.

It must be observed, in this connection, that prior to the Constitution, under section 24 of Public Land Act No. 2874, aliens could acquire public agricultural lands used for industrial or residential purposes, but after the Constitution and under section 23 of Commonwealth Act No. 141, the right of aliens to acquire such kind of lands is completely stricken out, undoubtedly in pursuance of the constitutional limitation. And, again, prior to the Constitution, under section 57 of Public Land Act No. 2874, land of the public domain suitable for residence or industrial purposes could be sold or leased to aliens, but after the Constitution and under section 60 of Commonwealth Act No. 141, such land may only be leased, but not sold, to aliens, and the lease granted shall only be valid while the land is used for the purposes referred to. The exclusion of sale in the new Act is undoubtedly in pursuance of the constitutional limitation, and this again is another legislative construction that the term "public agricultural land" includes land for residence purposes.

Such legislative interpretation is also in harmony with the interpretation given by the Executive Department of the Government. Way back in 1939, Secretary of Justice Jose Abad Santos, in answer to a query as to "whether or not the phrase 'public agricultural lands' in section 1 of Article XII (now XIII) of the Constitution may be interpreted to include residential, commercial, and industrial lands for purposes of their disposition," rendered the following short, sharp and crystal clear opinion:

"Section 1, Article XII (now XIII) of the Constitution classifies lands of the public domain in the Philippines into agricultural, timber and mineral. This is the basic classification adopted since the enactment of the Act of Congress of July 1, 1902, known as the Philippine Bill. At the time of the adoption of the Constitution of the Philippines, the term 'agricultural public lands' and, therefore, acquired a technical meaning in our public laws. The Supreme Court of the Philippines in the leading case of *Mapa vs. Insular Government*, 10 Phil., 175, held that the phrase 'agricultural public lands' means those public lands acquired from Spain which are neither timber nor mineral lands. This definition has been followed by our Supreme Court in many subsequent cases. *

* *

"Residential, commercial, or industrial lots forming part of the public domain must have to be included in one or more of these classes. Clearly, they are neither timber nor mineral, of necessity, therefore, they must be classified as agricultural.

"Viewed from another angle, it has been held that in determining whether lands are agricultural or not, the character of the land is the test (*Odell vs. Durant*, 62 N. W., 524; *Lorch vs. Missoula Brick & Tile Co.*, 123 p. 25). In other words, it is the susceptibility of the land to cultivation for agricultural purposes, by ordinary farming methods which determines whether it is agricultural or not (*State vs. Stewart*, 190 p. 129).

"Furthermore, as said by the Director of Lands, no reason is seen why a piece of land, which may be sold to a person if he is to devote it to agricultural, cannot be sold to him if he intends to use it as a site for his home."

This opinion is important not alone because it comes from a Secretary of Justice who later became the Chief Justice of this Court, but also because it was rendered by a member of the cabinet of the late President Quezon who actively participated in the drafting of the constitutional provision under consideration. (2 Aruego, *Framing of the Philippine Constitution*, p. 598.) And the opinion of the Quezon administration was reiterated by the Secretary of Justice under the Osmeña administration, and it was firmly maintained in this Court by the Solicitor General of both administrations.

It is thus clear that the three great departments of the Government—judicial, legislative and executive—have always maintained that lands of the public domain are classified into agricultural, mineral and timber, and that agricultural lands include residential lots.

Under section 1 of Article XIII of the Constitution, "natural resources, with the exception of public agricultural land, shall not be alienated," and with respect to public agricultural lands, their alienation is limited to Filipino citizens. But this constitutional purpose conserving agricultural resources in the hands of Filipino citizens may easily be defeated by the Filipino citizens themselves who may alienate their agricultural lands in favor of aliens. It is partly to prevent this result that section 5 is included in Article XIII, and it reads as follows:

"Sec. 5. Save in cases of hereditary succession, no private agricultural land will be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

This constitutional provision closes the only remaining avenue through which agricultural resources may leak into aliens' hands. It would certainly be futile to prohibit the alienation of public agricultural lands to aliens if, after all, they may be freely so alienated upon their becoming private agricultural lands in the hands of Filipino citizens. Undoubtedly, as above indicated, section 5 is intended to insure the policy of nationalization contained in section 1. Both sections must, therefore, be read together for they have the same purpose and the same subject matter. It must be noticed that the persons against whom the prohibition is directed in section 5 are the very same persons who under section 1 are disqualified "to acquire or hold lands of the public domain in the Philippines." And the subject matter of both sections is the same, namely, the non transferability of "agricultural land" to aliens. Since "agricultural land" under section 1 includes residential lots, the same technical meaning should be attached to "agricultural land" under section 5. It is a rule of statutory construction that "a word or phrase repeated in a statute will bear the same meaning throughout the statute, unless a different intention appears." (II Sutherland, Statutory Construction, p. 758.) The only difference between "agricultural land" under section 1, and "agricultural land" under section 5, is that the former is public and the latter private. But such difference refers to ownership and not to the class of land. The lands are the same in both sections, and, for the conservation of the national patrimony, what is important is the nature or class of the property regardless of whether it is owned by the State or by its citizens.

Reference is made to an opinion rendered on September 19, 1941, by the Hon. Teofilo Sison, then Secretary of Justice, to the effect that residential lands of the public domain may be considered as agricultural lands, whereas residential lands of private ownership cannot be so considered. No reason whatsoever is given in the opinion for such a distinction, and no valid reason can be adduced for such a discriminatory view, particularly having in mind that the purpose of the constitutional provision is the conservation of the national patrimony, and 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 alienable 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 residential lands of the public domain shall have become private residential lands.

It is maintained that in the first draft of section 5, the words "no land of private ownership" were used and later changed into "no agricultural land of private ownership," and lastly into "no private agricultural land" and from these changes it is argued that the word "agricultural" introduced in the second and final drafts was intended to limit the meaning of the word "land" to land actually used for agricultural purposes. The implication is not accurate. The wording of the first draft was amended for no other purpose than to clarify concepts and avoid

uncertainties. The words "no land" of the first draft, unqualified by the word "agricultural," may be mistaken to include timber and mineral lands, and since under section 1, this kind of lands can never be private, the prohibition to transfer the same would be superfluous. Upon the other hand, section 5 had to be drafted in harmony with section 1 to which it is supplementary, as above indicated. Inasmuch as under section 1, timber and mineral lands can never be private, and the only lands that may become private are agricultural lands, the words "no land of private owner ship" of the first draft can have no other meaning than "private agricultural land." And thus the change in the final draft is merely one of words in order to make its subject matter more specific with a view to avoiding the possible confusion of ideas that could have arisen from the first draft.

If the term "private agricultural lands" is to be construed as not including residential lots or lands not strictly agricultural, the result would be that "aliens may freely acquire and possess not only residential lots and houses for themselves but entire subdivisions, and whole towns and cities," and that "they may validly buy and hold in their names lands of any area for building homes, factories, industrial plants, fisheries, hatcheries, schools, health and vacation resorts, markets, golf courses, playgrounds, airfields, and a host of other uses and purposes that are not, in appellant's words, strictly agricultural." (Solicitor General's Brief, p. 6.) That this is obnoxious to the conservative spirit of the Constitution is beyond question.

One of the fundamental principles underlying the provision of Article XIII of the Constitution and which was embodied in the report of the Committee on Nationalization and Preservation of Lands and other Natural Resources of the Constitutional Convention, is "that lands, minerals, forests, and other natural resources constitute the exclusive heritage of the Filipino nation. They should, therefore, be preserved for those under the sovereign authority of that nation and for their posterity." (2 Aruego, Framing of the Filipino Constitution, p. 595.) Delegate Ledesma, Chairman of the Committee on Agricultural Development of the Constitutional Convention, in a speech delivered in connection with the national policy on agricultural lands, said: "The exclusion of aliens from the privilege of acquiring public agricultural lands and of owning real estate is a necessary part of the Public Land Laws of the Philippines to keep pace with the idea of preserving the Philippines for the Filipinos." (Italics ours.) And, of the same tenor was the speech of Delegate Montilla who said: "With the complete nationalization of our lands and natural resources it is to be understood that our God-given birthright should be one hundred per cent in Filipino hands * * *. Lands and natural resources are immovables and as such can be compared to the vital organs of a person's body, the lack of possession of which may cause instant death or the shortening of life. * * * If we do not completely nationalize these two of our most important belongings, I am afraid that the time will come when we shall be sorry for the time we were born. Our independence will be just a mockery, for what kind of independence are we going to have if a part of our country is not in our hands but in those of foreigners?" (Italics ours.) Professor Aruego says that since the opening days of the Constitutional Convention one of its fixed and dominating objectives was the conservation and nationalization of the natural resources of the country. (2 Aruego, Framing of the Philippine Constitution, p. 592.) This is ratified by the members of the Constitutional Convention who are now members of this Court, namely, Mr. Justice Perfecto, Mr. Justice Briones, and Mr. Justice Hontiveros. And, indeed, if under Article XIV, section 8, of the Constitution, an alien may not even operate a small jitney for hire, it is certainly not hard to understand that neither is he allowed to own a piece of land.

This constitutional intent is made more patent and is strongly implemented by an act of the National Assembly passed soon after the Constitution was approved. We are referring again to Commonwealth Act No. 141. Prior to the Constitution, there were in the Public Land Act No. 2874 sections 120 and 121 which granted aliens the right to acquire private lands only by way of reciprocity. Said section reads as follows:

"Sec. 120. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act; to corporations

organized in the Philippine Islands authorized therefor by their charters, and, upon express authorization by the Philippine Legislature, to citizens of countries the laws of which grant to citizens of the Philippine Islands the same right to acquire, hold, lease, encumber, dispose of, or alienate land, or permanent improvements thereon, or any interest therein, as to their own citizens, only in the manner and to the extent specified in such laws, and while the same are in force, but not thereafter.

"Sec. 121. No land originally acquired in any manner under the provisions of the former Public Land Act or of any other Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippine Islands with regard to public lands, terrenos baldios y realengos, or lands of any other denomination that were actually or presumptively of the public domain, or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corporations, or associations who may acquire land of the public domain under this Act; to corporate bodies organized in the Philippine Islands whose charters may authorize them to do so, and, upon express authorization by the Philippine Legislature, to citizens of the countries the laws of which grant to citizens of the Philippine Islands the same right to acquire, hold, lease, encumber, dispose of, or alienate land or permanent improvements thereon or any interest therein, as to their own citizens, and only in the manner and to the extent specified in such laws, and while the same are in force, but not thereafter: Provided, however, That this prohibition shall not be applicable to the conveyance or acquisition by reason of hereditary succession duly acknowledged and legalized by competent courts, nor to lands and improvements acquired or held for industrial or residence purposes, while used for such purposes: Provided, further, That in the event of the ownership of the lands and improvements mentioned in this section and in the last preceding section being transferred by judicial decree to persons, corporations or associations not legally capacitated to acquire the same under the provisions of this Act, such persons, corporations, or associations shall be obliged to alienate said lands or improvements to others so capacitated within the precise period of five years, under the penalty of such property reverting to the Government in the contrary case." (Public Land Act, No. 2874.)

It is to be observed that the phrase "no land" used in these sections refers to all private lands, whether strictly agricultural, residential or otherwise, there being practically no private land which had not been acquired by any of the means provided in said two sections. Therefore, the prohibition contained in these two provisions was, in effect, that no private land could be transferred to aliens except "upon express authorization by the Philippine Legislature, to citizens of countries the laws of which grant to citizens of the Philippine Islands the same right to acquire, hold, lease, encumber, dispose of, or alienate land." In other words, aliens were granted the right to acquire private land merely by way of reciprocity. Then came the Constitution and Commonwealth Act No. 141 was passed, sections 122 and 123 of which read as follows:

"Sec. 122. No land originally acquired in any manner under the provisions of this Act, nor any permanent improvement on such land, shall be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain under this Act or to corporations organized in the Philippines authorized therefor by their charters.

"Sec. 123. No land originally acquired in any manner under the provisions of any previous Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippines with regard to public lands, terrenos baldios y realengos, or lands of any other denomination that were actually or presumptively of the public domain, or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corporations or associations who may acquire land of the public domain under this Act or to corporate bodies organized in the Philippines whose charters authorize them to do so: Provided, however, That this prohibition shall not be applicable to the conveyance or acquisition by reason of hereditary succession duly acknowledged and legalized by competent courts: Provided, further, That in the event of the ownership of the lands and improvements mentioned in this section and in the last preceding section being transferred by judicial decree to persons, corporations or associations not legally capacitated to acquire the same under the provisions of this Act, such persons,

corporations, or associations shall be obliged to alienate said lands or improvements to others so capacitated within the precise period of five years; otherwise, such property shall revert to the Government."

These two sections are almost literally the same as sections 120 and 121 of Act No. 2874, the only difference being that in the new provisions, the right to reciprocity granted to aliens is completely stricken out. This, undoubtedly, is to conform to the absolute policy contained in section 5 of Article XIII of the Constitution which, in prohibiting the alienation of private agricultural lands to aliens, grants them no right of reciprocity. This legislative construction carries exceptional weight, for prominent members of the National Assembly who approved the new Act had been members of the Constitutional Convention.

It is said that the lot in question does not come within the purview of sections 122 and 123 of Commonwealth Act No. 141, there being no proof that the same had been acquired by one of the means provided in said provisions. We are not, however, deciding the instant case under the provisions of the Public Land Act, which have to refer to lands that had been formerly of the public domain, otherwise their constitutionality may be doubtful. We are deciding the instant case under section 5 of Article XIII of the Constitution which is more comprehensive and more absolute in the sense that it prohibits the transfer to aliens of any private agricultural land including residential land whatever its origin might have been.

And, finally, on June 14, 1947, the Congress approved Republic Act No. 133 which allows mortgage of "private real property" of any kind in favor of aliens but with a qualification consisting of expressly prohibiting aliens to bid or take part in any sale of such real property as a consequence of the mortgage. This prohibition makes no distinction between private lands that are strictly agricultural and private lands that are residential or commercial. The prohibition embraces the sale of private lands of any kind in favor of aliens, which is again a clear implementation and a legislative interpretation of the constitutional prohibition. Had the Congress been of opinion that private residential lands may be sold to aliens under the Constitution, no legislative measure would have been found necessary to authorize mortgage which would have been deemed also permissible under the Constitution. But clearly it was the opinion of the Congress that such sale is forbidden by the Constitution and it was such opinion that prompted the legislative measure intended to clarify that mortgage is not within the constitutional prohibition.

It is well to note at this juncture that in the present case we have no choice. We are construing the Constitution as it is and not as we may desire it to be. Perhaps the effect of our construction is to preclude aliens, admitted freely into the Philippines from owning "sites where they may build their homes. But if this is the solemn mandate of the Constitution, we will not attempt to compromise it even in the name of amity or equity. We are satisfied, however, that aliens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as a lease contract which is not forbidden by the Constitution. Should they desire to remain here forever and share our fortunes and misfortunes, Filipino citizenship is not impossible to acquire.

For all the foregoing, we hold that under the Constitution aliens may not acquire private or public agricultural lands, including residential lands, and, accordingly, judgment is affirmed, without costs.

Feria, Pablo, Perfecto, Hilado, and Briones, JJ., concur.

CONCURRING OPINION

PERFECTO, J.:

Today, which is the day set for the promulgation of this Court's decision, might be remembered by future generations always with joy, with gratitude, with pride. The failure of the highest tribunal of the land to do its duty in this case would have amounted to a national disaster. We would have refused to share the responsibility of causing it by, wittingly or unwittingly, allowing ourselves to act as tools in a conspiracy to sabotage the most important safeguard of the age long patrimony of our people, the land which destiny or Providence has set aside to be the permanent abode of our race for unending generations. We who have children and grandchildren, and who expect to leave long and ramifying dendriform lines of descend ants, could not bear the thought of the curse they may fling at us should the day arrive when our people will be foreigners in their fatherland, because in the crucial moment of our history, when the vision of judicial statemanship demanded on us the resolution and boldness to affirm and withhold the letter and spirit of the Constitution, we faltered. We would have preferred heroic defeat to inglorious desertion. Rather than abandon the sacred cause, we would have been ready to fall enveloped in the folds of the banner of our convictions for truth, for justice, for racial survival. We are happy to record that this Supreme Court turned an impending failure to a glorious success, saving our people from a looming catastrophe.

On July 3, 1946, the case of Oh Cho vs. Director of Lands, (43 Off. Gaz., 866), was submitted for our decision. The case was initiated in the Court of First Instance of Tayabas on January 17, 1940, when an alien, Oh Cho, a citizen of China, applied for title and registration of a parcel of land located in the residential district of Guinayangan, Tayabas, with a house thereon. The Director of Lands opposed the application, one of the main grounds being that "the applicant, being a Chinese, is not qualified to acquire public or private agricultural lands under the provisions of the Constitution."

On August 15, 1940, Judge P. Magsalin rendered decision granting the application. The Director of Lands appealed. In the brief filed by Solicitor General Roman Ozaeta, after wards Associate Justice of the Supreme Court and now Secretary of Justice, and Assistant Solicitor General Rafael Amparo, appellant made only two assignments of error, although both raised but one question, the legal one stated in the first assignment of error as follows:

"The lower court erred in decreeing the registration of the land in question in favor of the applicant who, according to his own voluntary admission is a citizen of the Chinese Republic."

The brief was accompanied, as Appendix A, by the opinion of Secretary of Justice Jose A. Santos who, while Chief Justice of the Supreme Court, suffered heroic martyrdom at the hands of the Japanese—addressed to the Secretary of Agriculture and Commerce on July 15, 1939, supporting the same theory as the one advanced by the Director of Lands. The same legal question raised by appellant is discussed, not only in the brief for the appellee, but also in the briefs of the several amici curiae allowed by the Supreme Court to appear in the case.

As a matter of fact, the case has been submitted for final decision of the Supreme Court since July of 1941, that is, six years ago. It remained undecided when the Pacific War broke out in December, 1941. After the Supreme Court was reorganized in the middle of 1945, it was found that the case was among those which were destroyed in February, 1945, during the battle for the liberation of Manila. The case had to be reconstituted upon motion of the office of the Solicitor General, filed with this Court on January 14, 1946, in which it was also prayed that, after being reconstituted, the case be submitted for final adjudication. The case was for the second time submitted for decision on July 3, 1946.

After the last submission, it took the Supreme Court many days to deliberate on the case, especially on the legal question as to whether an alien may, under the Constitution, acquire private urban lands. An overwhelming majority answered no. But when the decision was promulgated on August 31, 1946, a majority resolved to ignore

the question, notwithstanding our efforts to have the question, which is vital, pressing and far-reaching, decided once and for all, to dispel definitely the uncertainty gnawing the conscience of the people. It has been our lot to be alone in expressing in unmistakable terms our opinion and decision on the main legal question raised by appellant. The constitutional question was bypassed by the majority because they were of opinion that it was not necessary to be decided, notwithstanding the fact that it was the main and only legal question upon which appellant Director of Lands relied in his appeal, and the question has been almost exhaustively argued in four printed briefs filed by the parties and the amici curiae. Assurance was, nevertheless, given that in the next case in which the same constitutional question is raised, the majority shall make known their stand on the question.

The next case came when the present one was submitted to us for decision on February 3, 1947. Again, we deliberated on the constitutional question for several days.

On February 24, 1947, the case was submitted for final vote, and the result was that the constitutional question was decided against petitioner. The majority was also overwhelming. There were eight of us, more than two thirds of the Supreme Court. Only three Justices dissented.

While the decision was being drafted, somehow, the way the majority had voted must have leaked out. On July 10, 1947, appellant Krivenko filed a motion for withdrawal of his appeal, for the evident purpose of preventing the rendering of the majority decision, which would settle once and for all the all-important constitutional question as to whether aliens may acquire urban lots in the Philippines.

Appellant chose to keep silent as to his reason for filing the motion. The Solicitor General's office gave its conformity to the withdrawal of the appeal. This surprising assent was given without expressing any ground at all. Would the Supreme Court permit itself to be cheated of its decision voted since February 24, 1947?

Discussion immediately ensued as to whether the motion should be granted or denied, that is, whether this Court should abstain from promulgating the decision in accordance with the result of the vote taken on February 24, 1947, as if, after more than six years during which the question has been submitted for the decision of the highest tribunal of the land, the same has failed to form a definite opinion.

After a two-day deliberation, the Chief Justice, Mr. Justice Paras, Mr. Justice Hontiveros, Mr. Justice Padilla and Mr. Justice Tuason voted to grant the motion for withdrawal. Those who voted to deny the motion were Mr. Justice Feria, Mr. Justice Pablo, ourselves, Mr. Justice Hilado and Mr. Justice Bengzon. The vote thus resulted in a tie, 5-5. The deadlock resulting from the tie should have the effect of denying the motion, as provided by section 2 of Rule 56 to the effect that "where the Court in banc is equally divided in opinion * * * on all incidental matters, the petition or motion shall be denied." And we proposed that the rule be complied with, and the denial be promulgated.

Notwithstanding this, as Mr. Justice Briones was then absent, our brethren resolved to give him the opportunity of casting his vote on the question, although we insisted that it was unnecessary. Days later, when all the members of the Court were already present, a new vote was taken. Mr. Justice Briones voted for the denial of the motion, and his vote would have resulted, as must be expected, in 6 votes for the denial against 5 for granting. But the final result was different. Seven votes were cast for granting the motion and only four were cast for its denial.

But then, by providential design or simply by a happy stroke of luck or fate, on the occasion of the registration by the register of deeds of Manila of land purchases of two aliens, a heated public polemic flared up in one section of the press, followed by controversial speeches, broadcast by radio, and culminating in the issuance on August 12, 1947, of Circular No. 128 of the Secretary of Justice which reads as follows:

"To all Register of deeds :

"Paragraph 5 of Circular No. 14, dated August 25, 1945, is hereby amended so as to read as follows:

" '5(a). Instruments by which private real property is mortgaged in favor of any individual, corporation, or association for a period not exceeding five years, renewable for another five years, may be accepted for registration. (Section 1, Republic Act No. 133.)

" '(b). Deeds or documents by which private residential, commercial, industrial or other classes of urban lands, or any right, title or interest therein is transferred, assigned or encumbered to an alien, who is not an enemy national, may be registered. Such classes of land are not deemed included within the purview of the prohibition contained in section 5, Article XIII of the Constitution against the acquisition or holding of "private agricultural land" by those who are not qualified to hold or acquire lands of the public domain. This is in conformity with Opinion No. 284, series of 1941, of the Secretary of Justice and with the practice consistently followed for nearly ten years since the Constitution took effect on November 15, 1935.

" '(c). During the effectivity of the Executive Agreement entered into between the Republic of the Philippines and the Government of the United States on July 4, 1946, in pursuance of the so-called Parity Amendment to the Constitution, citizens of the United States and corporations or associations owned or controlled by such citizens are deemed to have the same rights as citizens of the Philippines and corporations or associations owned or controlled by citizens of the Philippines in the acquisition of all classes of lands in the Philippines, whether of private ownership or pertaining to the public domain.' "

"Roman Ozaeta

"Secretary of Justice"

Paragraph 5 of Circular No. 14, dated August 25, 1945, amended by the above is as follows:

"Deeds or other documents by which a real property, or a right, or title thereto, or an interest therein, is transferred, assigned or encumbered to an alien, who is not an enemy national, may be entered in the primary entry book; but, the registration of said deeds or other documents shall be denied—unless and/or until otherwise specifically directed by a final decision or order of a competent court— and the party in interest shall be advised of such denial, so that he could avail himself of the right to appeal therefrom, under the provisions of section 200 of the Revised Administrative Code. The denial of registration shall be predicated upon the prohibition contained in section 5, Article XIII (formerly Article XII) of the Constitution of the Philippines, and sections 122 and 123 of Commonwealth Act No. 141, the former as amended by Commonwealth Act No. 615."

The polemic found echo even in the Olympic serenity of a cloistered Supreme Court and the final result of long and tense deliberation which ensued is concisely recorded in the following resolution adopted on August 29, 1947:

"In *Krivenko vs. Register of Deeds, City of Manila*, L630, a case already submitted for decision, the appellant filed a motion to withdraw his appeal with the conformity of the adverse party. After full discussion of the matter specially in relation to the Court's discretion (Rule 52, section 4, and Rule 58), Mr. Justice Paras, Mr. Justice Hilado, Mr. Justice Bengzon, Mr. Justice Padilla and Mr. Justice Tuazon voted to grant, while the Chief Justice, Mr. Justice Feria, Mr. Justice Pablo, Mr. Justice Perfecto and Mr. Justice Briones voted to deny it. A re-deliberation was consequently had, with the same result. Thereupon Mr. Justice Paras proposed that Mr. Justice Hontiveros be asked to sit and break the tie; but in view of the latter's absence due to illness and petition for retirement, the Court by a vote of seven to three did not approve the proposition. Therefore, under Rule 56, section 2, the motion to withdraw is considered denied.

"Mr. Justice Padilla states that in his opinion the tie could not have the effect of overruling the previous vote of seven against four in favor of the motion to withdraw.

"Mr. Justice Paras states: Justice Hontiveros is aware of and conversant with the controversy. He has voted once on the motion to withdraw the appeal. He is still a member of the Court and, on a moment's notice, can be present at any session of the Court. Last month, when all the members were present, the votes on the motion stood 7 to 4. Now, in the absence of one member, on re consideration, another changed his vote resulting in a tie. Section 2 of Rule 56 requires that all efforts be exerted to break a deadlock in the votes. I deplore the inability of the majority to agree to my proposition that Mr. Justice Hontiveros be asked to participate in the resolution of the motion for withdrawal. I hold it to be fundamental and necessary that the votes of all the members be taken in cases like this.

"Mr. Justice Perfecto stated, for purposes of completeness of the narration of facts, that when the petition to withdraw the appeal was submitted for resolution of this Court two days after the petition was filed, five justices voted to grant and five others voted to deny, and expressed the opinion that since then, according to the rules, the petition should have been considered denied. Said first vote took place many days before the one alluded to by Mr. Justice Padilla.

"Mr. Justice Tuason states: The motion to withdraw the appeal was first voted upon with the result that 5 were granting and 5 for denial. Mr. Justice Briones was absent and it was decided to wait for him. Sometime later, the same subject was deliberated upon and a new voting was had, on which occasion all the 11 justices were present. The voting stood 7 for allowing the dismissal of the appeal and 4 against. Mr. Justice Perfecto and Mr. Justice Briones expressed the intention to put in writing their dissents. Before these dissents were filed, about one month afterwards, without any previous notice the matter was brought up again and re-voted upon; the result was 5 to 5. Mr. Justice Hontiveros, who was ill but might have been able to attend if advised of the necessity of his presence, was absent. As the voting thus stood, Mr. Justice Hontiveros' vote would have changed its result unless he changed his mind, a fact of which no one is aware. My opinion is that since there was no formal motion for reconsideration nor a previous notice that this matter would be taken up once more, and since Mr. Justice Hontiveros had every reason to believe that the matter was over as far as he was concerned, this Justice's vote in the penultimate voting should, if he was not to be given an opportunity to recast his vote, be counted in favor of the vote for the allowance of the motion to withdraw. Above all, that opportunity should not have been denied on grounds of pure technicality never invoked before. I counted that the proceeding was arbitrary and illegal."

The resolution does not recite all the reasons why Mr. Justice Hontiveros did not participate in that last two votings and why it became unnecessary to wait for him any further to attend the sessions of the Court and to cast his vote on the question.

Appellant Krivenko moved for the reconsideration of the denial of his withdrawal of appeal, alleging that it became moot in view of the ruling made by the Secretary of Justice in circular No. 128, thus giving us a hint that the latter, wittingly or unwittingly, had the effect of trying to take away from the Supreme Court the decision of an important constitutional question, submitted to us in a pending litigation. We denied the motion for reconsideration. We did not want to entertain any obstruction to the promulgation of our decision.

If the processes had in this case had been given the publicity suggested by us for all the official actuations of this Supreme Court, it should have been known by the whole world that since July, 1946, that is, more than a year ago, the opinion of the members of this Court had already been crystallized to the effect that under the Constitution, aliens are forbidden from acquiring urban lands in the Philippines, and it must have known that in this case a great majority had voted in that sense on February 24, 1947.

The constitutional question involved in this case cannot be left undecided without jeopardizing public interest. The uncertainty in the public mind should be dispelled without further delay. While the doubt among the people as to what is the correct answer to the question remains to be dissipated, there will be uneasiness, undermining public morale and leading to evils of unpredictable extent. This Supreme Tribunal, by overwhelming majority,

already knows what the correct answer is, and should not withhold and keep it for itself with the same zealotry with which the ancient families of the Eumolpides and Keryces were keeping the Eleusinian mysteries. The oracle of Delphus must speak so that the people may know for their guidance what destiny has in store for them.

The great question as to whether the land bequeathed to us by our forefathers should remain as one of the most cherished treasures of our people and transmitted by inheritance to unending generations of our race, is not a new one. The long chain of land-grabbing invasions, conquests, depredations, and colonial imperialism recorded in the darkest and bloodiest pages of history from the bellicose enterprises of the Hittites in the plains of old Assyria, irrigated by the waters of the Tigris and Euphrates, and the invasion of Egypt by the Hyksos, up to the conquests of Hernan Cortes and Pizarro, the achievements of Cecil Rhodes, and the formation of the Spanish, Portuguese, Dutch, French and German colonial empires, had many of its iron links forged in our soil since Magellan, the great est navigator of all history, had set foot at Limasawa and paid, for his daring enterprises, with his life at the hands of Lapulapu's men in the battle of Mactan.

Since then, almost four centuries ago, our people have continuously been engaged in an unrelentless struggle to defend the national patrimony against the aggressive onslaughts of foreigners bent on grabbing our lands. First came the Spanish encomenderos and other gratuitous concessioners who were granted by the Spanish crown immense areas of land. Immediately came the friars and other religious corporations who, notwithstanding their sacred vow of poverty, felt their greed whetted by the bountiful opportunities for easy and unscrupulous enrichment. Taking advantage of the uncontrollable religious leadership, on one side, and of the Christian virtues of obedience, resignation, humility, and credulity of a people who, after conversion to Catholicism, embraced with tacit faith all its tenets and practiced them with the loyalty and fidelity of persons still immune from the disappointments and bitterness caused by the vices of modern civilization, the foreign religious orders set aside all compunction to acquire by foul means many large estates. Through the practice of confession and other means of moral intimidation, mostly based on the eternal tortures of hell, they were able to obtain by donation or by will the lands of many simple and credulous Catholics who, in order to conquer the eternal bliss of heaven, renounced all their property in favor of religious orders and priests, many under the guise of chaplaincies or other apparently religious purposes, leaving in destitute their descendants and relatives. Thus big religious landed estates were formed, and under the system unbearable iniquities were committed. The case of the family of Rizal is just an index of a situation, which, under the moral leadership of the hero, finally drove our people into a national revolution not only against the Spanish sovereignty under which the social cancer had grown to unlimited proportions.

Profiting from the lessons of history, the Delegates to our Constitutional Convention felt it their duty to insert in the fundamental law effective guarantees for conserving the national patrimony, the wisdom of which cannot be disputed in a world divided into nations and nationalities. In the same way that scientists and technicians resorted to radars, sonars, thermistors and other long range detection devices to stave off far-away enemy attacks in war, said Delegates set the guarantees to ward off open inroads or devious incursions into the national patrimony as a means of insuring racial safety and survival.

When the ideal of one world should have been translated into reality, those guarantees might not be needed and our people may eliminate them. But in the meantime, it is our inescapable devoir, as the ultimate guardians of the Constitution, never to neglect the enforcement of its provisions whenever our action is called upon in a case, like the one now before us.

One of the fundamental purposes of the government established by our Constitution is, in its very words, that it "shall conserve and develop the patrimony of the nation." That mandate is addressed to all departments and branches of our government, without excluding this Supreme Court. To make more specific the mandate, Article

XIII has been inserted so as to avoid all doubt that all the natural resources of the country are reserved to Filipino citizens. Our land is the most important of our natural resources. That land should be kept in the hands of our people until, by constitutional amendment, they should decide to renounce that age-long patrimony. Save by hereditary succession—the only exception allowed by the Constitution—no foreigner may by any means acquire any land, any kind of land, in the Philippines. That was the overwhelming sentiment prevailing in the Constitutional Convention, that was the overpowering desire of the great majority of the Delegates, that was the dominating thought that was intended to be expressed in the great document, that was what the Committee on Style—the drafter of the final text—has written in the Constitution, and that was what was solemnly ratified in the plebiscite by our people, who then were rankling by the sore spot of illegally Japanized Davao.

The urgency of settling once and forever the constitutional question raised in this case cannot be overemphasized. If we should decide this question after many urban lots have been transferred to and registered in the name of alien purchasers, a situation may be created in which it will be hard to nullify the transfers and the nullification may create complications and problems highly distasteful to solve. The Georgia case is an objective lesson upon which we can mirror ourselves. From pages 22 and 23 of the book of Charles P. Curtiss, Jr. entitled "Lions Under the Throne," we quote the following:

"It is of interest that it seems to have happened chiefly in important cases. Fletcher vs. Peck, in 1810, is the stock example. That was the first case in which the Court held a state statute void. It involved a national scandal. The 1795 legislature of Georgia sold its western lands, most of Alabama and Mississippi, to speculators. Perhaps it was the greatest real estate steal in our history. The purchase price was only half a million dollars. The next legislature repealed the statute for fraud, the bribery of legislator, but not before the land companies had completed the deal and unloaded. By that time, and increasingly soon afterwards, more and more people had bought, and their title was in issue. Eleven million of the acres had been bought for eleven cents an acre by leading citizens of Boston. How could they clear their title? Alexander Hamilton gave an opinion, that the repeal of the grant was void under the Constitution as an impairment of the obligation of a contract.

"But could they not get a decision from the Supreme Court? Robert Fletcher of Anhirst, New Hampshire, had bought fifteen thousand acres from John Peck of Boston. He sued Peck, and he won. Fletcher appealed. Plainly it was a friendly suit. Marshall was nobody's fool. He told Cranch that the Court was reluctant to decide the case 'as it appeared manifestly made up for the purpose of getting the Court's judgment.' John Quincy Adams so reports in his diary. Yet Marshall decided it, and he held the repeal void, just as Hamilton said it was. 'The fact that Marshall rendered an opinion, under the circumstances,' says Beveridge, 'is one of the finest proofs of his greatness. A weaker man than John Marshall, and one less wise and courageous, would have dismissed the appeal.' That may be, but it was the act of a statesman, not of a judge. The Court has always been able to overcome its judicial diffidence on state occasions."

We see from the above how millions of acres of land were stolen from the people of Georgia and due to legal technicalities the people were unable to recover the stolen property. But in the case of Georgia, the lands had fallen into American hands and although the scandal was of gigantic proportions, no national disaster ensued. In our case if our lands should fall into foreign hands, although there may not be any scandal at all, the catastrophe sought to be avoided by the Delegates to our Constitutional Convention will surely be in no remote offing.

We conclude that, under the provisions of the Constitution, aliens are not allowed to acquire the ownership of urban or residential lands in the Philippines and, as a consequence, all acquisitions made in contravention of the prohibitions since the fundamental law became effective are null and void per se and ab initio. As all public officials have sworn, and are duty bound, to obey and defend the Constitution, all those who, by their functions, are in charge of enforcing the prohibition as laid down and interpreted in the decision in this case, should spare no

efforts so that any and all violations which may have taken place should be corrected.

We decide, therefore, that, upon the above premises, appellant Alexander A. Krivenko, not being a Filipino citizen, could not acquire by purchase the urban or residential lot here in question, the sale made in his favor by the Magdalena Estate, Inc. being null and void ab initio, and that the lower court acted correctly in rendering the appealed decision, which we affirm.

CONCURRING OPINION

HILADO, J.:

Upon appellant's motion to withdraw his appeal herein with the conformity of the Solicitor General in behalf of appellee, indulging, at the time, all possible intendments in favor of another department, I ultimately voted to grant the motion after the matter was finally deliberated and voted upon. But the votes of the ten Justices participating were evenly divided, and under Rule 52, section 4, in relation with Rule 56, section 2, the motion was denied. The resolution to deny was adopted in the exercise of the court's discretion under Rule 52, section 4, by virtue of which it has discretion to deny the withdrawal of the appeal even though both appellant and appellee agree upon the withdrawal, when appellee's brief has been filed. Under the principle that where the necessary number have concurred in an opinion or resolution, the decision or determination rendered is the decision or determination of the court (2 C. J. S., 296), the resolution denying the motion to withdraw the appeal was the resolution of the court. Pursuant to Rule 56, section 2, where the court in banc is equally divided in opinion, such a motion "shall be denied." As a necessary consequence, the court as to decide the case upon the merits.

After all, a consistent advocate and defender of the principle of separation of powers in a government like ours that I have always been, I think that under the circumstances it is well for all concerned that the Court should go ahead and decide the constitutional question presented. The very doctrine that the three coordinate, coequal and independent departments should be maintained supreme in their respective legitimate spheres, makes it at once the right and the duty of each to defend and uphold its own peculiar powers and authority. Public respect for and confidence in each department must be striven for and kept, for any lowering of the respect and diminution of that confidence will in the same measure take away from the very usefulness of the respective department to the people. For this reason, I believe that we should avert and avoid any tendency in this direction with respect to this Court.

I am one of those who presume that Circular No. 128, dated August 12, 1947, of the Secretary of Justice, was issued in good faith. But at the same time, that declaration in sub-paragraph (b) of paragraph 5 of Circular No. 14, which was already amended, to the effect that private residential, commercial, industrial or other classes of urban lands "are not deemed included within the purview of the prohibition contained in section 5, Article XIII, of the Constitution", made at a time when the selfsame question was pending decision of this Court, gives rise to the serious danger that should this Court refrain from deciding said question and giving its own interpretation of the constitutional mandate, the people may see in such an attitude an abandonment by this Court of a bounden duty, peculiarly its own, to decide a question of such a momentous transcendence, in view of an opinion, given in advance of its own decision, by an officer of another department. This will naturally detract in no small degree from public respect and confidence towards the highest Court of the land. Of course, none of us—the other governmental departments included—would desire such a situation to ensue.

I have distinctly noticed that the decision of the majority is confined to the constitutional question here presented, namely, "whether or not an alien under our Constitution may acquire residential land." (Opinion, p. 2.) Leases of

residential lands, or acquisition, ownership or lease of a house or building thereon, for example, are not covered by the decision.

With these preliminary remarks and the statement of my concurrence in the opinion ably written by the Chief Justice, I have signed said decision.

CONCURRING OPINION

BRIONES, M.:

Estoy conforme en un todo con la ponencia, a la cual no se puede añadir ni quitar nada, tal es su acabada y compacta elaboracion. Escribo, sin embargo, esta opinion separada nada mas que para unas observaciones, particularmente sobre ciertas fases extraordinarias de este asunto harto singular y extraordinario.

I. Conforme se relata en la concurrencia del Magistrado Sr. Perfecto, despues de laboriosas deliberaciones este asunto se puso finalmente a votacion el 24 de Febrero de este año, confirmandose la sentencia apelada por una buena mayoria. En algunos comentarios adelantados por cierta parte de la prensa—impaciencia que solo puede hallar explicacion en un nervioso y excesivo celo en la vigilancia de los intereses publicos, maxime tratandose, como se trata, de la conservacion del patrimonio nacional—se ha hecho la pregunta de por que se ha demorado la promulgacion de la sentencia, habiendose votado el asunto todavia desde casi comienzos del año.

A simple vista, la pregunta tiene justificacion; pero bien considerados los hechos se vera que no ha habido demora en el presente caso, mucho menos una demora desusada, alarmante, que autorice y justifique una critica contra los metodos de trabajo de esta corte. El curso seguido por el asunto ha sido normal, bajo las circunstancias. En realidad, no ya en esta Corte ahora, sino aun en el pasado, antes de la guerra, hubo mas lentitud en casos no tan dificiles ni tan complicados como el que nos ocupa, en que las cuestiones planteadas y discutidas no tenian la densidad constitucional y juridica de las que se discuten en el presente caso. Hay que tener en cuenta que desde el 24 de Febrero en que se voto finalmente el asunto hasta el 1.º de Abril en que comenzaron las vacaciones judiciales, no habian transcurrido mas que 34 dias; y cuando se reanudaron formalmente las sesiones de esta Corte en Julio se suscito un incidente de lo mas extraordinario—incidente que practica mente vino a impedir, a paralizar la pronta promulgacion de la sentencia. Me refiero a la mocion que el 10 de Julio presentaron los abogados del apelante pidiendo permiso para retirar su apelacion. Lo sorprendente de esta mocion es que viene redactada escuetamente, sin explicar el por que de la retirada, ni expresar ningun fundamento. Pero lo mas sorprendente todavia es la conformidad dada por el Procurador General, tambien escueta e inceremoniosamente.

Digo que es sorprendente la retirada de la apelacion por que pocos casos he visto que hayan sido arguidos con tanta energia, tanto interes y tanto celo por la parte apelante como este que nos ocupa. Los abogados del apelante no solo presentaron un alegato concienzudo de 34 paginas, sino que cuando se llamo a vista el asunto informaron verbal mente ante esta Corte argumentando vigorosa y extensa mente sobre el caso. El Procurador General, por su parte, ha presentado un alegato igualmente denso, de 31 paginas, en que se discuten acabadamente, hasta el punto maximo de saturacion y agotamiento, todos los angulos de la formidable cuestion constitucional objeto de este asunto. Tambien informo el Procurador General verbalmente ante esta Corte, entablando fuerte lid con los abogados del apelante.

Con la mocion de retirada de la apelacion se hubo de retardar necesariamente la promulgacion de la sentencia, pues trabajosas deliberaciones fueron necesarias para resolver la cuestion, dividiendose casi por igual los miembros de la Corte sobre si debia o no permitirse la retirada. Habia unanimidad en que bajo la regla 52, seccion 4, del Reglamento de los Tribunales teniamos absoluta discrecion para conceder o denegar la mocion, toda vez

que los alegatos estaban sometidos desde hacia tiempo, el asunto estaba votado y no faltaba mas que la firma y promulgacion de la decision juntamente con las disidencias. Sin embargo, algunos Magistrados opinaban que la discrecion debia ejerci tarse en favor de la retirada en virtud de la practica de evitar la aplicacion de la Constitucion a la solucion de un litigio siempre que se puede sentenciarlo de otra manera. (Entre los Magistrados que pensaban de esta manera se incluian algunos que en el fondo del asunto estaban a favor de la confirmacion de la sentencia apelada, es decir, creian que la Constitucion prohíbe a los extranjeros la adquisicion a titulo dominical de todo genero de propiedad inmueble, sin excluir los solares residenciales, comerciales e industriales.) Pero otros Magistrados opinaban que en el estado tan avanzado en que se hallaba el asunto los dictados del interes publico y de la sana discrecion requerian imperiosamente que la cuestion se atacase y decidiese frontalmente; que si una mayoria de esta Corte estaba convencida, como al parecer lo estaba, de que existia esa interdiccion constitucional contra la facultad adquisitiva de los extranjeros, nuestro claro deber era apresurarnos a dar pleno y positivo cumplimiento a la Constitucion al presentarse la primera oportunidad; que el meollo del asunto, la lis mota era eso— la interdiccion constitucional—; por tanto, no habia otra manera de decidirlo mas que aplicando la Constitucion; obrar de otra manera seria desercion, abandono de un deber jurado.

Asi estaban las deliberaciones cuando ocurre otro incidente mucho mas extraordinario y sorprendente todavia que la retirada no explicada de la apelacion con la insolita conformidad del Procurador General; algo asi como si de un cielo sereno, sin nubes, cayera de pronto un bolido en medio de nosotros, en medio de la Corte: me refiero a la circular num. 123 del Secretario de Justicia expedida el 12 de Agosto proximo pasado, esto es, 32 dias despues de presentada la mocion de retirada de la apelacion. Esa circular se cita comprensivamente en la ponencia y su texto se copia integramente en la concurrencia del Magistrado Sr. Perfecto; asi que me creo excusado de transcribirla in toto. En breves terminos, la circular reforma el parrafo 5 de la circular num. 14 del mismo Departamento de Justicia de fecha 25 de Agosto, 1945, y levanta la prohibicion o interdiccion sobre el registro e inscripcion en el registro de la propiedad de las "escrituras o documentos en virtud de los cuales terrenos privados residenciales, comerciales, industriales u otras clases de terrenos urbanos, o cualquier derecho, titulo o interes en ellos, se transfieren, ceden o gravan a un extranjero que no es national enemigo." En otras palabras, el Secretario de Justicia, por medio de esta circular, dejaba sin efecto la prohibicion contenida en la circular num. 14 del mismo Departamento—la prohibicion que precisamente ataca el apelante Krivenko en el asunto que tenemos ante Nos—y autorizaba y ordenaba a todos los Registradores de Titulos en Filipinas para que inscribiesen las escrituras o documentos de venta, hipoteca o cualquier otro gravamen a favor de extranjeros, siempre que no se tratase de terrenos publicos o de "terrenos privados agricolas," es decir, siempre que los terrenos objeto de la escritura fuesen "residenciales, comerciales e industriales."

La comparacion de esa circular con un bolido caido subitamente en medio de la Corte no es un simple tropo, no es una mera imagen retorica: refleja una verdadera realidad. Esa circular, al derogar la prohibicion decretada en el parrafo 5 de la circular num. 14—prohibicion que, como queda dicho, es precisamente el objeto del presente asunto— venia practicamente a escamotear la cuestion discutida, la cuestion sub judice sustrayendola de la jurisdiccion de los tribunales. Dicho crudamente, el Departamento de Justicia venia a arrebatarse el asunto de nuestras manos, de las manos de esta Corte, anticipandose a resolverlo por si mismo y dando efectividad y vigor inmediatos a su resolucion mediante la correspondiente automation a los Registradores de Titulos.

A la luz de esa circular queda perfectamente explicada la mocion de retirada de la apelacion consentida insolitamente por el Procurador General. ¿Para que esperar la decision de la Corte Suprema que acaso podria ser adversa? ¿No estaba ya esa circular bajo la cual podian registrarse ahora las ventas de terrenos residenciales, comerciales o industriales a extranjeros? Por eso no es extraño que los abogados del apelante Krivenko, en su mocion de 1.º de Septiembre, 1947, pidiendo la reconsideracion de nuestro auto denegando la retirada de la apelacion, dijeran por primera vez como fundamento que la cuestion ya era simple mente academica ("question is

now moot") en vista de esa circular y de la conformidad del Procurador General con la retirada de la apelacion. He aqui las propias pala bras de la mocion del apelante Krivenko:

"In view of Circular No. 128 of the Department of Justice, dated August 12, 1947, which amends Circular No. 14 by expressly authorizing the registration of the sale of urban lands to aliens, and in view of the fact that the Solicitor General has joined in the motion for withdrawal of the appeal, there is no longer a controversy between the parties and the question is now moot. For this reason the court no longer has jurisdiction to act on the case." [1]

Lo menos que se puede decir de esa accion del Departamento de Justicia atravesandose en el camino de los tribunales mientras un asunto esta sub judice, es que ello no tiene precedentes, que yo sepa, en los anales de la administracion de justicia en Filipinas en cerca de medio siglo que llevamos de existencia bajo un gobierno constitucional y sus tancialmente republicano. Ni aun en los llamados dias del Imperio, cuando la soberania americana era mas propensa a manejar el baston grueso y afirmar vigorosamente los fueros de su poder y autoridad, se vio jamas a un departamento ejecutivo del gobierno, mucho menos al Departamento de Justicia o a alguna de sus dependencias entrometirse en el ejercicio ordenado por los tribunales de su jurisdiccion y competencia. Era una tradicion firmemente establecida en las esferas del Poder Ejecutivo—tradicion inviolada e inviolable—maxime en el Departamento de Justicia y en la Fiscalia General, el inhibirse de expresar alguna opinion sobre un asunto ya sometido a los tribunales, excepto cuando venian llamados a hacerlo, en representacion del gobierno, en los tramites de un litigio, civil o criminal, propiamente planteado ante dichos tribunales. Fuera de estos casos, la inhibicion era tradicionalmente absoluta, observada con la devocion y la escrupulosidad de un rito. Y la razon era muy sencilla: jamas se queria estorbar ni entorpecer la funcion de los tribunales de justicia, los cuales, bajo la carta organica y las leyes, tenian absoluto derecho a actuar con maximo desembarazo, libres de toda ingerencia extraña. Esto se hizo bajo la Ley Cooper; esto se hizo bajo la Ley Jones; y esto se hizo bajo la Ley Tydings-McDuffie, la ley organica del Commonwealth. Creo que el pueblo filipino tiene derecho a que eso mismo se haga bajo el gobierno de la Republica, que es suyo, que es de su propia hechura. ¿No faltaba mas que los hombres de su propia raza le nieguen lo que no le negaron gobernantes de otra raza!

No se niega la facultad de supervision que tiene el Departamento de Justicia sobre las oficinas y dependencias que caen bajo su jurisdiccion, entre ellas las varias oficinas de registro de la propiedad en Manila y en las provincias. Tampoco se niega la facultad que tiene dicho Departamento para expedir circulares, ya de caracter puramente administrativo, ya de caracter semijudicial, dando instrucciones, vgr., a los registradores acerca de como deben desempenar sus funciones. De hecho la circular num. 14 de 25 de Agosto, 1945, es de esta ultima naturaleza: en ella se instruye y ordena a los registradores de titulos que no registren ni inscriban ventas de propiedad inmueble a extranjeros, asi sean terrenos residenciales, comerciales o industriales. Pero la facultad llega solo hasta alli; fuera de esas fronteras el campo ya es puro y exclusivamente judicial. Cuando una determinada circular del Departamento a los registradores es combatida o puesta en tela de juicio ante los tribunales, ora por fundamentos constitucionales, ora por razones meramente legates, ya no es el Departamento el que tiene que determinar o resolver la dispute, sino que eso compete en absolute a los tribunales de justicia. Asi lo dispone terminantemente el articulo 200 delCodigo Administrative Segun este articulo, el asunto o disputa debe elevarse en forma de consulta a la Sala Cuarta del Juzgado de Primera Instancia de Manila. La ley no confiere ninguna facultad al Departamento de Justicia para enjuiciar y decidir el caso. Y cuando una parte no estuviere conforme con la decision de la Sala Cuarta, ella puede alzarse de la sentencia para ante la . Corte Suprema. He aqui el texto integro del articulo 200 delCodigo Administrativo:

"Sec. 200. Reference of doubtful matter to judge of fourth branch of Court of First Instance at Manila.—When the register of deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented for registration or where any party in interest

does not agree with the register of deeds with reference to any such matter, the question shall be referred to the judge of the fourth branch of the Court of First Instance of the Ninth Judicial District either on the certificate of the register of deeds stating the question upon which he is in doubt or upon the suggestion in writing of the party in interest; and thereupon said judge, upon consideration of the matter as shown by the record certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made."

Tal es lo que ha ocurrido en el presente caso. Krivenko presento su escritura de compraventa al Registrador de la Propiedad de Manila, fiste denego la inscription solicitada en virtud de la prohibition contenida en la circular num. 14. ¿Que hizo Krivenko entonces? Elevo acaso el asunto al Departamento de Justicia? No. Lo que hicieron sus abogados entonces fue presentar una demanda el 23 de Noviembre, 1945, contra el Registrador de Titulos ante la Sala Cuarta del Juzgado de Primera Instancia de Manila, numerandose dicha demanda como consulta num. 1289; y cuando esta Sala decidio el asunto confirmando la accion del Registrador, Krivenko trajo a esta Corte la apelacion que estamos considerando. Tan elemental es esto que en la misma circular num. 14 se dice que la prohibicion queda decretada hasta que los tribunales resuelvan lo contrario. He aqui la fraseologia pertinente de dicha circular num. 14:

"* * * the registration of said deeds or other documents shall be denied,—unless and/or until otherwise specifically directed by a final decision or order of a competent court—and the party in interest shall be advised of such denial, so that he could avail himself of the right to appeal therefrom, under the provisions of section 200 of the Revised Administrative Code."

La posicion de la Corte Suprema ante este caso claro y positivo de intromision (interference) en sus funciones es de lo mas peculiar. Tenemos en el Reglamento de los Tribunales algunas disposiciones que proveen sancion por desacato para ciertos actos de intromision en el ejercicio de las funciones judiciales.[1]Pero se preguntara naturalmente: ¿son aplicables estas disposiciones cuando la intromision procede de un ramo del poder ejecutivo, el cual, como se sabe, en la mecanica de los poderes del Estado, es—usando un anglicismo-coigual y coordinado con el poder judicial, maxime si esa intromision se ha realizado so capa de un acto oficial? Cualquiera, pues, puede imaginarse la situacion tremendamente embarazosa, inclusive angustiosa en que esta Corte ha quedado colocada con motivo de esa intromision departamental, exponiendose a chocar con otro poder del Estado. En casos recientes en que estaban en vueltos otros poderes, esta Corte, estimando dudosa su posicion constitucional, prefirio adoptar una actitud de elegante inhibicion, de "manos fuera" (hands-off), si bien hay que hacer constar que con la fuerte disidencia de algunos Magistrados, entre ellos el opinante.[2]Tenemos, por tanto, un caso de verdadera intromision en que siendo, por lo menos, dudosa la facultad de esta Corte para imponer una sancion por desacato de acuerdo con el Reglamento de los Tribunales, le queda el unico recurso decente, ordenado: registrar su excepcion sin ambages ni eufemismos contra la intromision, y reafirmar con todo vigor, con toda firmeza su independencia.

Se arguye con tenaz persistencia que debiamos de haber concedido la mocion de retirada de la apelacion, por dos razones: (a) porque el Procurador General estaba conforme con dicha retirada; (b) para evitar la resolucion del punto constitucional envuelto, en virtud de la practica, segun se dice, de soslayar toda cuestion constitucional siempre que se pueda. Respecto de la primera razon sera suficiente decir que el Procurador General es libre de entrar en cualquiera transaccion sobre un asunto en que interviene, pero es evidente que su accion no ata ni obliga a esta Corte en el ejercicio de la discrecion que le confiere la regla 52, seccion 4, del Reglamento de los Tribunales, que reza como sigue:

"Rule 52, Sec. 4—An appeal may be withdrawn as of right at any time before the filing of appellee's brief. After that brief is filed the withdrawal may be allowed by the court in its discretion." * * * (Las cursivas son nuestras.)

Como se ve, nuestra discrecion es absoluta: no esta condicionada por la conformidad o disconformidad de una de las partes. Y la incondicionalidad de esa discrecion es mas absoluta e imperativa alli donde el litigio versa sobre una materia que no afecta solo a un interes privado, sino que es de interes publico, como el caso presente en que el Procurador General ha transigido no sobre un asunto suyo personal o de un cliente particular, sino de un cliente de mucha mayor monta y significacion—el pueblo filipino—y siendo materia del litigio la propiedad del suelo, parte, vitalisima del patrimonio nacional que nuestro pueblo ha colocado bajo la salvaguardia de la Constitucion.

Respecto del segundo fundamento, o sea que debiamos permitir la retirada de la apelacion para no tener que resolver la cuestion constitucional disputada, bastara decir que la practica, principio o doctrina que se invoca, lleva consigo una salvedad o cualificacion y es que el litigio se pueda resolver de otra manera. ¿Podemos soslayar el punto constitucional discutido en el pleito que nos ocupa? ¿Podemos decidirlo bajo otra ratio decidendi, esto es, que no sea la constitucionalidad o inconstitucionalidad de la venta del inmueble al apelante Krivenko, en virtud de su condition de extranjero? Indudablemente que no: la lis mota, la unica, es la misma constitucionalidad de la compraventa de que se trata. Para decidir si al recurrido-apelado, Registrador de Titulos de la Ciudad de Manila, le asiste o no razon para denegar la inscripcion solicitada por el recurrente y apelante, Krivenko, la unica disposicion legal que se puede aplicar es el articulo XIII, section 5, de la Constitucion de Filipinas, invocado por el Registrador como defensa e inserto en el parrafo 5 de la circular num. 14 como fundamento de la prohibicion o interdiccion contra el registro de las ventas de terreno a extranjeros. No hay otra ley para el caso.

El caso de Oh Cho contra el Director de Terrenos 43 Gac. Of., No. 3, pag. 866), que se cita en una de las disidencias, es completamente diferente. Es verdad que alli se planteo tambien la cuestion constitucional de que se trata, por cierto que el que lo planteaba en nombre del Gobierno era el actual Secretario de Justicia que entonces era Procurador General, y lo planteaba en un sentido absolutamente concorde con la circular num. 14. Pero esta Corte, con la disidencia de algunos Magistrados, opto por soslayar el punto constitucional denegando el registro solicitado por Oh Cho, por el fundamento de que bajo la Ley No. 2874 sobre terrenos de dominio publico los extranjeros estan excluidos de dichos terrenos; es decir, que el terreno solicitado se considero como terreno publico. ¿Podemos hacer la misma evasion en el presente caso, acogiendonos a la ley No. 2874 o a cualquier otra ley? Indudablemente que no porque ningun Magistrado de esta Corte, mucho menos los disidentes, consideran el terreno reclamado por Krivenko como terreno publico. Luego todos los caminos estan bloqueados para nosotros, menos el camino constitucional. Luego el segundo fundamento alegado para cubrir la evasiva tambien debe descartarse totalmente.

Se insinua que no debiamos darnos prisa en resolver constitucionalmente el presente asunto, puesto que pueden presentarse otros de igual naturaleza en tiempo no remoto, y en efecto se cita el caso de Rellosa contra Gaw Chee Hun (49 Off. Gaz., 4345), en que los alegatos de ambas partes ya estan sometidos y se halla ahora pendiente de decision. Es evidente que esto tampoco arguye en favor de la evasiva, en primer lugar, porque cuando se le somete un caso para deliberacion y decision esta Corte no tiene el deber de ir averiguando en su Escribania si hay casos de igual naturaleza, sino que los casos se someten por orden de prelacion y prioridad de tiempo a medida que esten preparados para deliberacion y decision; y en segundo lugar, porque cada caso debe decidirse por sus propios meritos y conforme a la ley pertinente. La salvedad o cualificacion de la doctrina o practica que se invoca no dice: "hay que soslayar la cuestion constitucional siempre que se pueda resolver de otra manera, reservando dicha cuestion constitucional para otro caso; la salvedad es dentro del mismo caso. De otro modo no seria un simple soslayo legal, sino que seria un subterfugio impropio, indebido, ilegal. En el presente caso no ha habido ninguna prisa, excesivo celo, como se insinua; desde luego no mayor prisa que en otros asuntos. El curso, el ritmo de los tramites ha sido normal; en realidad, si ha habido algo, ha sido un poco de parsimonia, lentitud.

¿Habia justificacion para demorar el pronto, rapido pronunciamiento de nuestro veredicto sobre la formidable

cuestion constitucional debatida, por lo menos, tan pronto como fuese posible? ¿Había alguna razón de interés público para justificar una evasiva? Absolutamente ninguna. Por el contrario, nuestro deber ineludible, imperioso, era formular y promulgar inmediatamente ese veredicto. Lo debíamos a nuestras conciencias; lo debíamos, sobre todo, al país para la tranquilidad y conveniencia de todos— del pueblo filipino y de los extranjeros residentes o que tuvieran voluntad de residir o negociar en estas Islas. Así cada cual podría hacer su composición de lugar, podría orientarse sin zozobras ni miedo a la incertidumbre. Tanto nacionales como extranjeros sabrían donde invertir su dinero. Todo lo que necesitábamos era tener dentro de esta Corte una mayoría firmemente convencida de que la Constitución provee la interdicción de que se trata. Tuvimos esa mayoría cuando se votó por primera vez este asunto en Febrero de este año (8 contra 3); la tuvimos cuando después de laboriosas deliberaciones quedó denegada la moción de retirada de la apelación, pues no tengo noticia de que ninguno de la mayoría haya cambiado de opinión sobre el fondo de la cuestión; la tenemos ahora naturalmente. Por tanto, nada hace falta ya para que se dé la señal de "luz verde" a la promulgación de la sentencia. Toda evasiva sería negligencia, desidia. Es más: sería abandono de un deber jurado, como digo en otra parte de esta concurrencia; y la Corte Suprema naturalmente no ha de permitir que se le pueda proferir el cargo de que ha abandonado su puesto privilegiado de vigía, de centinela avanzado de la Constitución.

No es que la Corte Suprema, con esto, pretenda tener "un monopolio de la virtud de sostener y poner en vigor, o de suplir una deficiencia en la Constitución," o que se crea más hábil y patriota que los otros departamentos del gobierno, como se insinúa en una de las disidencias. No hay tal cosa. El principio de la supremacía judicial no es una pretensión ni mucho menos un ademán de inmodestia o arrogancia, sino que es una parte vital de nuestras instituciones, una condición peculiarísima de nuestro sistema de gobierno en que a la judicatura, como uno de los tres poderes del Estado, corresponde la facultad exclusiva de disponer de los asuntos judiciales. Con respecto a los asuntos de registro particularmente esa facultad exclusiva no solo se infiere del principio de la supremacía judicial, sino que, como ya se ha dicho en otra parte de esta concurrencia, se halla específicamente estatuida en el artículo 200 del Código Administrativo transcrito arriba. Este artículo confiere jurisdicción exclusiva a los tribunales de justicia para decidir las cuestiones sobre registro, y esto lo ha reconocido el mismo Departamento de Justicia en su circular num. 14 al referir tales cuestiones a la determinación o arbitrio judicial en casos de duda o litigio.

Es injustificada la insinuación de que, al parecer, la mayoría denegó la retirada de la apelación no tanto para resolver el asunto en su fondo o por sus méritos, como para enervar los efectos de la circular num. 128 del Departamento de Justicia, pues Krivenko, el apelante, habría ganado entonces su pleito no en virtud de una sentencia judicial, sino pasando por la puerta trasera abierta por esa circular. Tampoco hay tal cosa. Ya repetidas veces se ha dicho que el presente asunto se había votado mucho antes de que se expidiese esa circular. Lo que más correctamente podría decirse es que si antes de la expedición de esa desafortunada circular poderosas razones de interés público aconsejaban que se denegase la retirada de la apelación y se diese final al asunto mediante una sentencia en el fondo, después de la expedición esas razones quedaron centuplicadas. La explicación es sencilla: nuestra aquiescencia a la retirada hubiera podido interpretarse entonces como que aprobábamos el escamoteo del asunto, sustrayendo dolo de nuestra jurisdicción. Es más: hubiera podido interpretarse como una abyecta rendición en la pugna por sostener los fueros decada ramo coigual y coordinado del gobierno.

Es todavía más injustificada la insinuación de que la denegación de la retirada de la apelación equivale "a asumir que el solicitante-apelante y el Procurador General se han confabulado con el Departamento de Justicia no solo para ingerirse en las funciones de esta Corte, sino para enajenar el patrimonio nacional a los extranjeros." Esto es inconcebible. La Corte presume que todos han obrado de buena fe, de acuerdo con los dictados de su conciencia. Se ha denegado la retirada de la apelación por razones puramente jurídicas y objetivas, sin consideración a los motivos de nadie.

Por ultimo, estimo que debe rectificarse la asercion de que el Magistrado Hontiveros fue excluido de la votacion que culmino en un empate y que determino el rechazamiento de la retirada de la apelacion, a tenor de la regla 56, seccion 2, Reglamento de los Tribunales. El Magistrado Hontiveros no estaba presente en la sesion por estar enfermo; pero estaban presentes 10 Magistrados, es decir, mas que el numero necesario para formar quorum y para despachar los asuntos. La rueda de la justicia en la Corte Suprema jamas ha dejado de rodar por la ausencia de uno o dos miembros, siempre que hubiese quorum. A la votacion precedieron muy laboriosas y vivas deliberaciones. Ningun Magistrado llamo la atencion de la Corte hacia la ausencia del Sr. Hontiveros. Ningun Magistrado pidio que se le esperase o llamase al Sr. Hontiveros. Todos se conformaron con que se efectuase la votacion, no obstante la ausencia del Sr. Hontiveros. En efecto, se hace la votacion y resulta un empate, es decir, 5 contra 5. De acuerdo con la regla 56, quedaba naturalmente denegada la mocion de retirada. ¿Donde esta, pues, la "ilegalidad", donde la "arbitrariedad"?

Algunos dias despues se presento una mocion de reconsideracion, la misma en que ya se alegaba como fundamento el hecho de que la cuestion ya era simplemente academica (moot question) por la conformidad del Procurador General con la retirada y por la circular num. 128 del Departamento de Justicia. Tampoco estaba presente el Sr. Hontiveros al someterse la mocion, la cual fue de nuevo denegada. Pregunto otra vez: ¿donde esta la "arbitrariedad"? Que culpa tenia la Corte de que el Sr. Hontiveros no pudiera estar presente por estar enfermo? ¿Iba a detenerse la rueda de la justicia por eso? Conviene, sin embargo, hacer constar que sobre el fondo de la cuestion el Sr. Hontiveros era uno de los 8 que habian votado en favor de la confirmacion de la sentencia apelada, es decir, en favor del veredicto de que la Constitucion excluye a los extranjeros de la propiedad de bienes raices en Filipinas.

II. No queda casi nada por decir sobre el fondo de la cuestion. Todos los angulos y fases de la misma estan acabadamente tratados y discutidos en la ponencia. Me limitare, por tanto, a hacer unas cuantas observaciones, unas sobre hermeneutica legal, y otras sobre historia national contemporanea, aprovechando en este ultimo respecto mis reminiscencias y mi experiencia como humilde miembro que fui de la Asamblea Constituyente que redactó y aprobo la Constitution de Filipinas.

Toda la cuestion, a mi juicio, se reduce a determinar e interpretar la palabra "agricola" (agricultural) usada en el articulo XIII, seccion 5, de la Constitucion. He aqui el texto completo de la seccion:

"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."

¿Incluye la palabra "agricultural" aqui empleada los terrenos residenciales, comerciales e industriales? Tal es la cuestion: la mayoria de esta Corte dice que si; los disidentes dicen que no.

Es indudable que por razones sanas de hermeneutica legal el articulo XIII de que se trata debe interpretarse como un todo homogeneo, simetrico. En otras palabras, los vocablos alli empleados deben interpretarse en el sentido de que tienen un mismo significado. Es absurdo pensar o suponer que en el texto de una ley, sobre todo dentro del estrecho marco de un articulo, un vocablo tenga dos o mas significados distintos, a menos que la misma ley asi lo diga expre samente. La presuncion es que el legislador sigue y se atiene a las reglas literarias elementales.

Ahora bien: el articulo XIII consta de dos partes—la primera, que trata de los terrenos agricolas de dominio publico, y la segunda, que se refiere a los terrenos agricolas privados o particulares.

La primera parte se compone de las secciones 1 y 2 que vinculan la propiedad de los terrenos publicos en el Estado y disponen que solo se pueden enajenar a favor de ciudadanos filipinos, o de corporaciones o asociaciones en que el 60 por ciento del capital, por lo menos, pertenece a tales ciudadanos. En ambas secciones se emplea

literalmente la frase "public agricultural land."

La segunda parte la componen las secciones 3 y 5: la seccion 3 preceptua que "the Congress may determine by law the size of private agricultural land which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law"[1]; y la seccion 5 es la que queda transcrita mas arriba y es objeto del presente litigio. En ambas secciones se emplea literalmente la frase "private agricultural land."

No hay ninguna cuestion de que la frase "public agricultural land" empleada en la primera parte comprende terrenos residenciales, comerciales e industriales; lo admiten los mismos abogados del apelante y los Sres. Magistrados disidentes. Y ¿por que lo admiten? Sera por que en la Constitucion se define la palabra "agricultural", aplicada a terrenos publicos, en el sentido de incluir solares residenciales, comerciales e industriales? Indudablemente que no, porque en ninguna parte de la Constitucion se da tal definicion. Lo admiten porque en esta jurisdiccion tenemos una serie consistente de sentencias de esta Corte Suprema en que es jurisprudencia firmemente establecida la doctrina de que la palabra "agricultural" usada en la Ley del Congreso de los Estados Unidos de 1902 (Ley Cooper) y en nuestras leyes de terrenos publicos comprende y abarca solares residenciales, comerciales, industriales y cualquier otra clase de terrenos, excepto forestales y minerales.[2]Es decir, que se aplica a la actual Constitution de Filipinas una interpretacion clasica, tradicional, embebida en nuestra jurisprudencia de cerca de medio siglo.

Ahora bien, pregunto: si la palabra "agricultural" empleada en la primera parte del articulo XIII tiene tal significado—y lo tiene porque la Constitucion no da otro diferente— ¿por que esa misma palabra empleada en la segunda parte, unas cuantas lineas mas adelante, no ha de tener el mismo significado? ¿Da acaso la Constitucion una definicion de la palabra "agricultural" cuando se refiere a terreno privado? ¿Donde esta esa definicion? ¿O es que se pretende que la diferenciacion opera no en virtud de la palabra "agricultural", sino en virtud del vocablo "public" o "private", segun que se trate de terreno publico o privado?

Si la intencion de la Asamblea Constituyente fuera el dar a la palabra "agricultural" aplicada a terreno privado un significado distinto de cuando se refiere a terreno publico, lo hubiese hecho constar asi expresamente en el mismo texto de la Constitucion Si, como se admite, la Asamblea opto por no definir la palabra "agricultural" aplicada a terreno publico porque contaba para ello con la definicion clasica establecida en la jurisprudencia, cuando la misma Asamblea tampoco definio la palabra con relacion a terreno privado, es logico inferir que tuvo la misma intencion, esto es, aplicar la definicion de la jurisprudencia a ambos tipos de terreno—el publico y el privado. Pensar de otra manera podria ser ofensivo, insultante; podria equivaler a decir que aquella Asamblea estaba compuesta de miembros ignorantes, desconocedores de las reglas elementales en la tecnica de redaccion legislativa.

Tuve el honor de pertenecer a aquella Asamblea como uno de los Delegados por Cebu. Tambien me cupo el honor de pertenecer al llamado Comité de Siete—el comite encargado finalmente de redactar la ponencia de la Constitucion. No digo que aquella Asamblea estaba compuesta de sabios, pero indudablemente no era inferior a ninguna otra de su tipo en cualquiera otra parte del mundo. Alli habia un plantel de buenos abogados, algunos versados y especialistas en derecho constitucional. Alli estaba el Presidente de la Universidad de Filipinas Dr. Rafael Palma; alli estaba el propio Presidente de la Asamblea Constituyente Hon. Claro M. Recto, con los prestigios de su reconocida cultura juridica y humanista; alli estaba tambien el Dr. Jose P. Laurel, considerado como una de las primeras autoridades en derecho constitucional y politico en nuestro pais. En el Comité de Siete o de Ponencia figuraban el actual Presidente de Filipinas Hon. Manuel Roxas; el ex-Senador de Cebu Hon. Filemon Sotto; el Hon. Vicente Singson Encarnacion, lider de la minoria en la primera Asamblea Filipina, ex-miembro de la Comision de Filipinas, ex-Senador y ex-Secretario de Gabinete; el ex-Magistrado de la Corte Suprema Hon.

Norberto Romualdez; el actual Secretario de Hacienda Hon. Miguel Cuaderno; y el ex-Decano del Colegio de Artes Liberales de la Universidad de Filipinas, Hon. Conrado Benitez.

No se puede concebir como bajo la inspiracion y guia de estas personas pudiera redactarse el texto de un articulo en que un vocablo—el vocablo "agricultural"—tuviera dos acepciones diferentes: una, aplicada a terrenos publicos; y otra, aplicada a terrenos privados. Menos se concibe que, si fuese esta la intencion, se incurriese en una omision imperdonable: la omision de una definicion especifica, dife renciadora, que evitase caos y confusion en la mente de los abogados y del publico. Teniendo en cuenta la innegable competencia de los Delegados a la Asamblea Constituyente y de sus lideres, lo mas logico pensar es que al no definir la palabra "agricultural" y al no diferenciar su aplicacion entre terrenos publicos y privados, lo hicieron deliberadamente, esto es, con la manifiesta intencion de dejar enteramente la interpretacion de la palabra a la luz de una sola comun definicion—la establecida en la jurisprudencia del asunto tipico de Mapa contra Gobierno Insular y otros similares (supra); es decir, que la palabra "agricultural", aplicada a terrenos privados, incluye tambien solares residenciales, comerciales, e industriales.

"A word or phrase repeated in a statute will bear the same meaning throughout the statute, unless a different intention appears. * * * Where words have been long used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute in which they are used, the rule of construction requires that the words used in such statute should be construed according to the sense in which they have been so previously used, although that sense may vary from the strict literal meaning of the words." (II Sutherland, Stat. Construction, p. 758.)

Pero acaso se diga que la Asamblea Constituyente ha dejado sin definir la palabra "agricultural" referente a terreno particular, dando a entender con su silencio que endosaba la definicion al diccionario o a la usanza popular. La suposicion es igualmente insostenible. ¿Por que en un caso se entrega la definicion a la jurisprudencia, y por que en otro al diccionario, o al habla popular? Aparte de que los miembros y dirigentes de la Asamblea Constituyente sabian muy bien que esto causaria una tremenda confusion. Ni los diccionarios, ni mucho menos el lenguaje popular, ofrecen apoyo seguro para una fiel y autorizada interpretacion. Si el texto mismo de la ley, con definiciones especificas y casuisticas, todavia ofrece dudas a veces ¿como no el lexico vulgar, con su infinita variedad de matices e idiotismos?

Ahora mismo ¿no estamos presenciando una confusion, una perplejidad? ¿Hay acaso uniformidad en la definicion de lo que es un terreno privado agricola? No; cada cual lo define a su manera. Uno de los disidentes el Magistrado Sr. Tuason toma su definicion de la palabra "agricultural" del Diccionario International de Webster que dice * * * "of or pertaining to agricultural connected with, or engaged in, tillage; as, the agricultural class; agricultural implements, wages, etc." Tambien hace referencia el mismo Magistrado al concepto popular. Otro disidente el Magistrado Sr. Padilla dice que "the term private agricultural land means lands privately owned devoted to cultivation, to the raising of agricultural products." El Magistrado Sr. Paras no da ninguna definicion; da por definida la palabra "agricultural", al parecer, segun el concepto popular.

Pero, sobre todo, los abogados del apelante definen el vocablo de una manera distinta. Segun ellos, "land spoken of as 'agricultural' naturally refers to land not only susceptible of agricultural or cultivation but more valuable for such than for another purpose, say residential, commercial or educational. * * * The criterion is not mere susceptibility of conversion into a farm but its greater value when devoted to one or the other purpose". De modo que, segun esta definicion, lo que determina la calidad del terreno es su valor relativo, segun que se dedique al cultivo, o a residencia, o al comercio, o a la industria. Los autores de esta definicion indudablemente tienen en cuenta el hecho de que en las afueras de las ciudades existen terrenos inmensos que desde tiempo inmemorial se han dedicado a la agricultura, pero que se han convertido en subdivisiones multiplicandose su valor en mil por ciento si no mas. De hecho esos terrenos son agricolas; como que todavia se ven alli los pilapiles y ciertas partes

están cultivadas; pero en virtud de su mayor valor para residencia, comercio e industria se les quiere colocar fuera de la prohibición constitucional. En verdad, el criterio no puede ser más elástico y convencional, y denota cuán incierta y cuán confusa es la situación a que da lugar la tesis del apelante y de los que le sostienen.

Si hubiéramos de hacer depender la definición de lo que es un terreno agrícola del concepto popular y de los diccionarios, así sean los mejores y más científicamente elaborados ¿que normas claras, concretas y definitivas de diferenciación podrían establecerse? ¿Podrían trazarse fronteras inconfundibles entre lo que es agrícola y lo que es residencial, comercial e industrial? ¿Podría hacerse una clasificación que no fuese arbitraria? Indudablemente que no. El patrón más usual de diferenciación es la naturaleza urbana o rural del terreno; se considera como residencial, comercial e industrial todo lo que está dentro de una urbe, ciudad o población. Pero ¿resolvería esto la dificultad? Proporcionaría un patrón exacto, científico, no arbitrario? Tampoco. Porque dentro de una ciudad o población puede haber y hay terrenos agrícolas. Como dijo muy bien el Magistrado Sr. Willard en el asunto clásico de Mapa contra Gobierno Insular, "uno de los inconvenientes de la adopción de este criterio es que es tan vago e indeterminado, que sería muy difícil aplicarlo en la práctica. ¿Que terrenos son agrícolas por naturaleza? El mismo Fiscal General, en su alegato presentado en este asunto, dice: 'La montaña más pedregosa y el suelo más pobre son susceptibles de cultivo mediante la mano del hombre' " (Mapa contra Gobierno Insular, 10 Jur. Fil., 183). Y luego el Sr. Willard añade las siguientes observaciones sumamente pertinentes e ilustrativas para una correcta resolución del asunto que nos ocupa, a saber:

"* * * Tales terrenos (agrícolas, quiere decir) se pueden encontrar dentro de los límites de cualquier ciudad. Hay dentro de la ciudad de Manila, y en la parte densamente poblada de la misma, una granja experimental. Esta es por su naturaleza agrícola. Contigua a la Luneta, en la misma ciudad, hay una gran extensión de terreno denominado Camp Wallace, destinada a sports. El terreno que circunda los muros de la ciudad de Manila, situado entre estos y el paseo del Malecón por el Oeste, La Luneta por el Sur, y el paseo de Bagumbayan por el Sur y Este contiene muchas hectáreas de extensión y es de naturaleza agrícola. La Luneta misma podría en cualquier tiempo destinarse al cultivo."

La dificultad es mayor tratándose de diferenciar un terreno agrícola de un terreno industrial. En este respecto es preciso tener en cuenta que un terreno industrial no tiene que ser necesariamente urbano; en realidad, la tendencia moderna es a situar las industrias fuera de las ciudades en vastas zonas rurales. Verbigracia; en derredor de la famosa cascada de María Cristina en Lanao existen grandes extensiones de terreno agrícola, algunas de propiedad particular. Cuando se industrialice aquella formidable fuerza hidráulica bajo el llamado Plan Beyster ¿que normas seguras se podrían establecer para poner en vigor la prohibición constitucional de que se trata? No habría peligro de que la Constitución fuese burlada enajenándose tierras agrícolas de propiedad privada a favor de extranjeros, ya sean individuos, ya sean corporaciones o asociaciones, so pretexto de ser industriales?

Resulta evidente de lo expuesto que los redactores de nuestra Constitución no pudieron haber tenido la idea de que el artículo XIII fuera interpretado a la luz de ese criterio vago e indeterminado que llama el Sr. Willard. Es más lógico pensar que el criterio que ellos tenían en la mente era el criterio establecido en la jurisprudencia sentada en el asunto clásico de Mapa contra Gobierno Insular y otros asuntos concomitantes citados—criterio más firme, más seguro, menos expuesto a confusión y arbitrariedad, y sobre todo, "que ofrece menos inconvenientes", parafraseando otra vez al Magistrado Sr. Willard, (supra, p. 185).

Otro serio inconveniente. La sección 3, artículo XIII de la Constitución, dispone que "el Congreso puede de terminar por ley la extensión superficial del terreno privado agrícola que los individuos, corporaciones o asociaciones pueden adquirir y poseer, sujeto a los derechos existentes antes de la aprobación de dicha ley." Si se interpretase que la frase "private agricultural land" no incluye terrenos residenciales, comerciales e industriales, entonces estas últimas clases de terreno quedarían excluidas de la facultad reguladora concedida por la

Constitucional Congreso mediante dicha seccion 3. Entonces un individuo o una corporacion podrian ser duenos dje todos los terrenos de una ciudad; no habria limite a las adquisiciones y posesiones en lo tocante a terrenos residenciales, comerciales e industriales. Esto parece absurdo, pero seria obligada consecuencia de la tesis sustentada por el apelante.

Se hace hincapie en el argumento de que en el proceso de tamizacion del articulo XIII durante las deliberaciones de la Asamblea Constituyente y de los Comites de Ponencia y de Estilo al principio no figuraba el adjetivo "agricola" en la seccion 5, diciendose solo "terreno privado", y que solo mas tarde se anadio la palabra calificativa "agricola", redondeandose entonces la frase "terreno privado agricola— "private agricultural land". De esto se quiere inferir que la adicion de la palabra "agricultural" debio de ser por algun motivo, y este no podia ser mas que el de que se quiso excluir los terrenoa residenciales, comerciales e industriales, limitandose el precepto a los propia o estricta mente agricolas.

La deducccion es incorrecta y sin fundamento. No cabe decir que la adicion de la palabra "agricultural" en este caso equivale a excluir los terrenos residenciales, comer ciales e industriales, por la sencilla razon de que la Constitucion no solo no define lo que es residencial, comercial e industrial, sino que ni siquiera hace mencion de ello. En ninguna parte de la Constitucion se emplean las palabras residencial, comercial e industrial. En cambio, ya hemos visto que la palabra "agricultural" tiene una significacion tradicionalmente bien establecida en nuestra jurisprudencia y en nuestro vocabulario juridico: incluye no solo terrenos cultivados o susceptibles de cultivo, sino tambien residen ciales, comerciales e industriales. Se admite por todo el mundo que la palabra tiene tal significacion en el articulo XIII, seccion 5, de la Constitucion, en cuanto se refiere a terreno publico. Ahora bien; ¿que diferencia hay, des pues de todo, entre un terreno publico agricola y un terreno privado agricola? En cuanto a la naturaleza, o sea, a la calidad de agricola, absolutamente ninguna. Uno no es mas o menos agricola que el otro. La unica diferencia se refiere a la propiedad, al titulo dominical— en que el uno es del Estado y el otro es de un particular.

En realidad, creo que la diferencia es mas bien psico logica, subjetiva—en que vulgarmente hablando parece que los conceptos de "agricola" y "residencial" se repelen. No se debe menospreciar la influencia del vulgo en algunas cosas; en la misma literatura el vulgo juega su papel; diga si no la formacion popular del romancero. Pero es indudable que ciertas cosas estan por encima del concepto vulgar—una de estas la interpretacion de las leyes, la hermeneutica legal. Esto no es exagerar la importancia de la tecnica, sino que es simplemente colocar las cosas en su verdadero lugar. La interpretacion de la ley es una funcion tecnica por excelencia; por eso que ha sido siempre funcion de minoria—los abogados. Si no fuera asi ipara que los abogados? ¿Y para que las escuelas de derecho, y para que los examenes, cada vez mas rigidos, para de purar el alma de la toga, que dijo un gran abogado espanol?[1] Asi que cuando decimos que el precepto constitucional en cuestion debe interpretarse tecnicamente, a la luz de la jurisprudencia, por ser ello el metodo mas seguro para hallar la verdad judicial, no importa que ello repugne al concepto vulgar a simple vista, no ponemos, en realidad, ninguna pica en Flandes, sino que propugna mos una cosa harto elemental por lo sabida.

Por tanto, no es necesario especular o devanarse los sesos tratando de inquirir por que en la tamizacion del precepto se anadio el adjetivo "agricultural" a las palabras "private land" en vez de dejarias solas, sin cualificacion. Algunos diran que fue por razon de simetria para hacer "pendant" con la frase "public agricultural land" puesta mas arriba. Pero esto no tiene ninguna importancia. Lo importante es saber que la anadidura, tal como esta, sin otro dato en el texto constitucional, no ha tenido el efecto de cambiar el significado juridico, tradicional en esta jurisdiccion, de la palabra "agricultural" empleada en dicho texto. Eso es todo: lo demas creo que es puro bizantinismo.

III. Creo que una examen de los documentos y debates de la Asamblea Constituyente para ver de inquirir la

motivacion y finalidad del precepto constitucional que nos ocupa puede ayudar grandemente y arrojar no poca luz en la interpretacion de la letra y espiritu de dicho precepto. Este genero de inquisition es perfectamente propio y permisible en hermeneutica constitucional, y se ha hecho siempre, segun las mejores autoridades sobre la materia. Cooley, en su autorizado tratado sobre Limitaciones Constitucionales (Constitutional Limitations) dice a este efecto lo siguiente:

"When the inquiry is directed to ascertaining the mischief designed to be remedied, or the purpose sought to be accomplished by a particular provision, it may be proper to examine the proceedings of the convention which framed the instrument. Where the proceedings clearly point out the purpose of the provision, the aid will be valuable and satisfactory; but where the question is one of abstract meaning, it will be difficult to derive from this source much reliable assistance in interpretation." (1 Cooley on Constitutional Limitations [8th ed.], p. 142.)

¿Que atmosfera prevalecia en la Asamblea sobre el problema de la tierra, en general sobre el problema capitalisimo de los terrenos naturales? ¿Cual era la tendencia predominante entre los Delegados? Y ¿como era tambien el giro de la opinion, del sentimiento publico, es decir, como era el pulso del pueblo mismo, del cual la Asamblea, des pues de todo, no era mas que organo e interprete?

Varios discursos sobre el particular se pronunciaron en la Asamblea Constituyente. El tono predominante en todos ellos era un fuerte, profundo nacionalismo. Tanto dentro como fuera de la Asamblea Constituyente era evidente, acusado, el afan unanime y decidido de conservar el patrimonio nacional no solo para las presentes generaciones filipinas, sino tambien para la posteridad. Y patrimonio nacional tenia, en la mente de todos, un significado categorico e indubitable: significaba no solo bosques, minas y otros recursos naturales, sino que significaba asimismo la tierra, el suelo, sin distincion de si es de dominio publico o privado. Muestras tipicas y representativas de este tono peculiar y dominante de la ideologia constituyente son ciertas manifestaciones que constan en el diario de sesiones, hechas en el curso de los debates o en el proceso de la redaccion del proyecto constitucional por Delegados de palabra autorizada, bien por su significacion personal, bien por el papel particular que desempeñaban en las tareas constituyentes. Por ejemplo, el Delegado Montilla, por Negros Occidental, conspicuo representante del agro, usando del privilegio de media hora parlamentaria dijo en parte lo siguiente:

"* * * Con la completa nacionalizacion de nuestras tierras y recursos naturales debe entenderse que nuestro patrimonio nacional debe estar vinculado 100 por 100 en manos filipinas. Tierras y recursos naturales son inmuebles y como tales pueden compararse con los organos vitales del cuerpo de una persona: la falta de posesion de los mismos puede causar la muerte instantanea o el abreviamento de la vida" (Diario de Sesiones, Asamblea Constituyente, inedita, "Framing of the Constitution," tit. 2º pag. 592, Libro del Profesor Aruego).

Como se ve, el Delegado Montilla habla de tierras sin adjetivacion, es decir sin diferenciar entre propiedad publica y privada.

El Delegado Ledesma, por Iloilo, otro conspicuo representante del agro, presidente del comite de agricultura de la Asamblea Constituyente, fue mas explicito diciendo inequívocamente que los extranjeros no podian ser dueños de propiedad inmueble (real estate). He aqui sus mismas palabras:

"La exclusion de los extranjeros del privilegio de adquirir terrenos publicos agricolas y de poder ser dueños de propiedades inmuebles (real estate) es una parte necesaria de las leyes de terrenos publicos de Filipinas para mantener firme la idea de conservar Filipinas para los filipinos" (Diario de Sesiones, id.; Libro de Aruego, supra, pag. 593.)

Es harto significativo que en el informe del Comite de Nacionalizacion y Conservacion de Recursos Naturales de la Asamblea Constituyente la palabra tierra (land) se usa genericamente, sin cualificacion de publica o privada. Dice el Comite:

"Que la tierra, los minerales, los bosques y otros recursos naturales constituyen la herencia exclusiva de la nacion filipina. Deben, por tanto, ser conservados para aquellos que se hallan bajo la autoridad soberana de esa nacion y para su posteridad." (Libro de Aruego, supra, pag. 595.)

La conservacion y fomento del patrimonio nacional fue una verdadera obsesion en la Asamblea Constituyente. Sus miembros que todavia viven recordaran la infinita paciencia, el esmero de orfebreria con que se trabajo el preambulo de la Constitution. Cada frase, cada concepto se sometio a un rigido proceso de seleccion y depuracion. Pues bien; de esa labor benedictina una de las gemas resultantes es la parte pertinente a la conservacion y fomento del patrimonio nacional. He aqui el preambulo:

"The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution."

El espiritu fuertemente nacionalista que saturaba la Asamblea Constituyente con respecto a la tierra y recursos naturales es de facil explicacion. Estabamos escribiendo una Constitucion no solo para el Commonwealth, sino tambien para la republica que advendria despues de 10 años. Queriamos, pues, asegurar firmemente las bases de nuestra nacionalidad. ¿Que cosa mejor, para ello, que blindar por los cuatro costados el cuerpo de la nacion, delcual—parodiando al Delegado Montilla—la tierra y los recursos naturales son como organos vitales, cuya perdida puede causar la muerte instantanea o el abreviamento de la vida?

Para apreciar el pulso de la nacion en aquel momento historico es preciso tener en cuenta las circunstancias. Nos dabamos perfecta cuenta de nuestra position geografica, asi como tambien de nuestras limitaciones demograficas. Se trataba, por cierto, de una conciencia aguda mente atormentadora y alarmante. Estabamos rodeados de enormes masas humanas—centenares de millones—economica y biologicamente agresivas, avidas de desbordarse por todas partes, por las areas del Pacifico particularmente, en busca de espacios vitales. China, Japon—Japon, sobre todo, que estaba entonces en el apogeo de su delirio de engrandecimiento economico y militarista. Teniamos apun tado al mismo corazon, como espada rutilante de Samurai, el pavoroso problema de Davao, donde, por errores iniciales del Gobierno, Japon tenia el control de la tierra, instituyendo alli una especie de Japon en miniatura, con todas las amenazas y peligros que ello implicaba para la integridad de nuestra existencia nacional. Como que Davao ya se llamaba popular y sarcasticamente Davaoko, en tragica rima con Manchuko.

Tambien nos obsesionaban otras lecciones dolorosas de historia contemporanea. Texas, Mejico, Cuba y otros paises del Mar Caribe y de la America Latina que todavia expiaban, como una terrible maldicion, el error de sus gobemantes al permitir la enajenacion del suelo a extranjeros.

Con el comercio y la industria principalmente en manos no-filipinas, los Delegados a la Constituyente se hacian cargo tambien de la vitalisima necesidad de, por lo menos, vincular el patrimonio nacional, entre otras cosas la tierra, en manos de los filipinos.

Que de extraño habia, pues, que en semejante atmos fera y tales circunstancias se aprobase un articulo rigidamente nacionalista como es el Articulo XIII? La motivacion y finalidad, como ya se ha dicho, era triple: (a) conservar el patrimonio nacional para las presentes y futuras generaciones filipinas; (b) vincular, por lo menos, la propiedad de la tierra y de los recursos naturales en manos filipinas como la mejor manera de mantener el equilibrio de un sistema economico dominado principal mente por extranjeros en virtud de su tecnica (know-how) superior y de su abundancia de capitales; (c) prevenir peligros que pudieran comprometer la defensa y la integridad de la nacion, y evitar a la republica conflictos y complicaciones internacionales.

No se concibe que los Delegados tuvieran la intencion de excluir del precepto los terrenos residenciales,

comerciales e industriales, pues sabian muy bien que los fines que se trataban de conseguir y los peligros que se trataban de evitar con la politica de nacionalizacion y conservacion rezaban tanto para una clase de terrenos como para otra. ¿Por que se iba a temer, verbigracia, el dominio extranjero sobre un terreno estrictamente agricola, sujeto a cultivo, y no sobre el terreno en que estuviera instalada una formidable industria o fabrica?

Otro detalle significativo. Era tan vigoroso el sentimiento nacionalista en la Asamblea Constituyente que, no obstante el natural sentimiento de gratitud que nos obligaba a favor de los americanos, a estos no se les concedio ningun privilegio en relacion con la tierra y demas recursos naturales, sino que se les coloco en el mismo piano que a los otros extranjeros. Como que ha habido necesidad de una reforma constitucional—la llama da reforma sobre la paridad—para equipararlos a los filipinos.

"The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and the obvious purpose of the law should not be sacrificed to a literal interpretation of such words." (II Sutherland, Stat. Construction, pp. 721, 722.)

IV.—Se insinua que no debieramos declarar que la Constitucion excluye a los extranjeros de la propiedad sobre terrenos residenciales, comerciales e industriales, porque ello imposibilitaria toda action legislativa en sentido contrarlo para el caso de que el Congreso llegase alguna vez a pensar que semejante interdiction debia levantarse. Se dice que es mejor y mas conveniente dejar esta cuestion en manos del Congreso para que haya mas elasticidad en las soluciones de los diferentes problemas sobre la tierra.

Cometeriamos un grave error si esto hicieramos. Esta es una cuestion constitucional por excelencia. Solamente el pueblo puede disponer del patrimonio nacional. Ni el Congreso, ni mucho menos los tribunales, pueden disponer de ese patrimonio. Lo mas que puede hacer el Congreso es proponer una reforma constitucional mediante los votos de tres cuartas (3/4) de sus miembros; y el pueblo tiene la ultima palabra que se expresara en una eleccion o plebiscito convocado al efecto.

El argumento de que esto costaria dinero es insostenible. Seria una economia mal entendida. Si no se escatiman gastos para celebrar elecciones ordinarias periodicamente ¿como ha de escatimarse para averiguar la verdadera voluntad del pueblo en un asunto tan vital como es la disposicion del patrimonio nacional, base de su misma existencia? Esto en el supuesto de que hubiera un serio movimiento para reformar la Constitucion, apoyado por tres cuartas (3/4) del Congreso, por lo menos.

En el entretanto el articulo XIII de la Constitucion debe quedar tal como es, e interpretarse en la forma como lo interpretamos en nuestra decision.

Se confirma la sentencia.

[1] En vista de la circular num. 128 del Departamento de Justicia fechada el 12 de Agosto, 1947, la cual enmienda la circular num. 14 en el sentido de autorizar el registro de la venta de terrenos urbanos a extranjeros, y en vista del hecho de que el Procurador General se ha unido a la mocion para la retirada de la apelacion, ya no existe ninguna controversia entre las partes y la cuestion es ahora academica. Por esta razon, la Corte ya no tiene jurisdiccion sobre el caso (Traduccion; las cursivas son nuestras).

[1] Vease regla 64, seccion 3, incisos c y d, Reglamento de los Tribunales.

[2] Vease el asunto de Vera contra Avelino (77 Phil., 192); vease tambien el asunto de Mabanag contra Lopez

Vito (78 Phil., 1).

[1] El Congreso puede determinar por ley la extension del terreno privado agricola que los individuos, corporaciones, o asociaciones pueden adquirir y poseer, sujeto a los derechos existentes antes de la promulgacion de dicha ley.

[2] Veanse los siguientes asuntos: Mapa contra Gobierno Insular, 10 Jur. Fil., 178; Montano contra Gobierno Insular, 12 Jur. Fil., 592; Santiago contra Gobierno Insular, 12 Jur. Fil., 615; Ibañez de Aldecoa contra Gobierno Insular, 13 Jur. Fil., 163; Ramos contra Director de Terrenos, 39 Jur. Fil., 184; y Jocson contra Director de Montes, 39 Jur. Fil., 509; Ankron contra Gobierno de Filipinas, 40 Jur. Fil., 10.

[1]Osorio y Gallardo.

DISSENTING OPINION

PARAS, J.:

Section 5 of Article XIII of the Constitution provides that "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." The important question that arises is whether private residential land is included in the terms "private agricultural land."

There is no doubt that under section 1 of Article XIII of the Constitution, quoted in the majority opinion, lands of the public domain are classified into agricultural, timber, or mineral. There can be no doubt, also, that public lands suitable or actually used for residential purposes, must of necessity come under any of the three classes.

But may it be reasonably supposed that lands already of private ownership at the time of the approval of the Constitution, have the same classifications? An affirmative answer will lead to the conclusion—which is at once absurd and anomalous—that private timber and mineral lands may be transferred or assigned to aliens by a mode other than hereditary succession. It is, however, contended that timber and mineral lands can never be private, and reliance is placed on section 1, Article XIII, of the Constitution providing that "all agricultural, timber and mineral lands of the public domain * * * belong to the State," and limiting the alienation of natural resources only to public agricultural land. The contention is obviously untenable. This constitutional provision, far from stating that all timber and mineral lands existing at the time of its approval belong to the State, merely proclaims ownership by the Government of all such lands as are then of the public domain; and although, after the approval of the Constitution, no public timber or mineral land may be alienated, it does not follow that timber or mineral lands theretofore already of private ownership also became part of the public domain. We have held, quite recently, that lands in the possession of occupants and their predecessors in interest since time immemorial do not belong to the Government, for such possession justifies the presumption that said lands had never been part of the public domain or that they had been private properties even before the Spanish conquest. (*Oh Cho vs. Director of Lands*, 43 Off. Gaz., 866.) This gives effect to the pronouncement in *Cariño vs. Insular Government* (212 U. S., 446; 53 Law. ed., 594), that it could not be supposed that "every native who had not a paper title is a trespasser." It is easy to imagine that some of such lands may be timber or mineral. However, if there are absolutely no private timber or mineral lands, why did the framers of the Constitution bother about speaking of "private agricultural land" in sections 3 and 5 of Article XIII, and merely of "lands" in section 4?

"Sec. 3. The Congress may determine by law the size of private agricultural land which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law.

"Sec. 4. The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.

"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."

Under section 3, the Congress may determine by law the size of private agricultural land which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law, and under section 4 it may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals. The latter section clearly negatives the idea that private lands can only be agricultural. If the exclusive classification of public lands contained in section 1 is held applicable to private lands, and, as we have shown, there may be private timber and mineral lands, there would be neither sense nor justification in authorizing the Congress to determine the size of private agricultural land only, and in not extending the prohibition of section 5 to timber and mineral lands.

In my opinion, private lands are not contemplated or controlled by the classification of public lands, and the term "agricultural" appearing in section 5 was used as it is commonly understood, namely, as denoting lands devoted to agriculture. In other words, residential or urban lots are not embraced within the inhibition established in said provision. It is noteworthy that the original draft referred merely to "private land." This certainty would have been comprehensive enough to include any kind of land. The insertion of the adjective "agricultural" is therefore significant. If the Constitution prohibits the alienation to foreigners of private lands of any kind, no legislation can ever be enacted with a view to permitting limited areas of land for residential, commercial, or industrial use, and said prohibition may readily affect any effort towards the attainment of rapid progress in Philippine economy. On the other hand, should any danger arise from the absence of such constitutional prohibition, a law may be passed to remedy the situation, thereby enabling the Government to adopt such elastic policy as may from time to time be necessary, unhampered by any inconveniences or difficulties in amending the Constitution. The power of expropriation is, furthermore, a handy safeguard against undesirable effects of unrestricted alienation to, or ownership by, aliens of urban properties. The majority argue that the original draft in which the more general terms "private land" was used, was amended in the same that the adjective "agricultural" was inserted in order merely "to clarify concepts and avoid uncertainties" and because, as under section 1, timber and mineral lands can never be private, "the prohibition to transfer the same, would be superfluous." In answer, it may be stated that section 4 of Article XIII, referring to the right of expropriation, uses "lands" without any qualification, and it is logical to believe that the use was made knowingly in contradistinction with the limited term "private agricultural land" in sections 3 and 5. Following the line of reasoning of the majority, "lands" in section 4 necessarily implies that what may be expropriated is not only private agricultural land but also private timber and mineral lands, as well, of course, as private residential lands. This of course tears apart the majority's contention that there cannot be any private timber or mineral land.

Any doubt in the matter will be removed when it is borne in mind that no less than Honorable Filemon Sotto, Chairman of the Sponsorship Committee of the Constitutional Convention, in supporting section 3 of Article XIII, explained that the same refers to agricultural land, and not to urban properties, and such explanation is somewhat confirmed by the statement of another member of the Convention (Delegate Sevilla) to the effect that said section "is discriminatory and unjust with regard to the agriculturists."

"Sr. Sotto (F.) Señor Presidente: "Que hay caballeros de la Convencion en el fondo de esta cuestion al parecer inocente y ordinaria para que tanto revuelo haya metido tanto en la sesion de ayer como en la de hoy? Que hay de misterioso en el fondo de este problema, para que politicos del volumen del caballero por Iloilo y del caballero por Batangas, tomen con gran interes una mocion para reconsiderar lo acordado ayer? Voy a ser frio,

señores. Parece que es mejor tratar estas cuestiones con calma y no con apasionamiento. He prestado atención, como siempre suelo hacer a todos los argumentos aducidos aquí en contra del precepto contenido en el draft y a favor ahora de la reconsideración y siento decir lo siguiente; todos son argumentos muy buenos a posteriori. Cuando la Asamblea Nacional se haya reunido, será la ocasión de ver si procede o no expropiar terrenos o latifundios existentes ahora o existentes después. En el presente, yo me limito a invitar la atención de la Convención al hecho de que el precepto no hace otra cosa más que autorizar a la Asamblea Nacional a que tome las medidas necesarias en tiempo oportuno, cuando el problema del latifundismo se haya presentado con caracteres tales que el bienestar, interés y orden público lo requieran. Permitame la Convención que lo discuta en globo las dos partes del artículo 9. Hay tal engranaje en los dos mandatos que tiene dicho precepto, hay tal eslabón en una u otra parte que es imposible, que es difícil que quitáramos deslindes si nos limitásemos a considerar una sola parte. La primera parte autoriza a la Legislatura para fijar el límite máximo de propiedad agrícola que los ciudadanos particulares pueden tener. Parece que es un punto que ha pasado desapercibido. No se trata aquí ahora de propiedades urbanas, sino de propiedades agrícolas, y es por la razón de que con mucha especialidad en las regiones agrícolas, en las zonas rústicas es donde el latifundismo se extiende con facilidad, y desde allí los tentáculos de los caciques van al cuello de los pobres y de los pequeños propietarios precisamente para ahogarles y para inutilizarles. Esta, pues, a salvo completamente la cuestión de las propiedades urbanas. Ciertos grandes solares de nuestras ciudades que con pretexto de tener ciertos edificios, que en realidad no necesitan de tales extensos solares para su existencia ni para su mantenimiento, puedan dormir tranquilos. No vamos contra esas propiedades. Por una causa o por otra el pasado nos ha legado ese lastre doloroso. Pero la región agrícola, la región menos explotada por nuestro pueblo, la región que necesitamos si queremos vivir por cuenta propia, la región que es el mayor incentivo no solo para los grandes capitalistas de fuera sino también para los grandes capitalistas interiores, esa región merece todos los cuidados del gobierno.

"Voy a pasar ahora a la relación que tiene la segunda parte de la enmienda con la primera. Una vez demostrado ante la Legislature, una vez convencida la Asamblea Nacional de que existe un latifundismo y que este latifundismo puede producir males o está produciendo daños a la comunidad, es cuando entonces la Legislature puede acordar la expropiación de los latifundios. Donde está el mal que los opositores a este precepto pretenden ver inútilmente? Prever es gobernar. Este es un postulado que todos conocen. Bien, voy a admitir para los propósitos del argumento que hoy no existen latifundios, y si los opositores al precepto quieren más vamos a convenir en que no existieran en el futuro. Pues, entonces, donde está el temor de que el hijo de tal no pueda recibir la herencia de cual? Por lo demás, el ejemplo repetidas veces presentado ayer y hoy en cuanto al heredero y al causahabiente no es completamente exacto. Vamos a suponer que efectivamente un padre de familia posee un número tal de hectáreas de terreno, superior o excedente a lo que fija la ley. Crean los Caballeros, creen los opositores al precepto que la Legislature, la Asamblea Nacional va a ser tan imprudente, tan loca que inmediatamente disponga por ley que aquella porción excedente del terreno que ha de recibir un hijo de su padre no podrá poseerlo, no podrá tenerlo o recibirlo el heredero.

"Esa es una materia para la Asamblea Nacional. La Asamblea Nacional sabe que no puede dictar leyes o medidas imposibles de cumplir. Fijara el plazo, fijara la proporción de acuerdo con las circunstancias del tiempo entonces en que vivamos. Es posible que ahora un número determinado de hectáreas sea excesivo; es posible que por desenvolvimientos económicos del país, ese número de hectáreas pueda ser elevado o reducido. Es por esto porque el Comité precisamente no ha querido fijar desde ahora el número de hectáreas, prefiriendo dejar a la sabiduría, a la prudencia, al patriotismo y a la justicia de la Asamblea Nacional el fijar ese número.

"Lo mismo digo de la expropiación. Se habla de que el gobierno no tendrá dinero; se habla de que no podrá revender las propiedades. Pero, Caballeros de la Convención, caballeros opositores del precepto; si la Legislatura, si la Asamblea Nacional estuviera convencida de que el gobierno no puede hacer una expropiación, va a hacerlo? La Asamblea Nacional dictara una ley autorizando la expropiación de tal o cual latifundio cuando este convencida, primero, de que la existencia de ese latifundio es amenazante para el

bienestar publico; y, segundo, cuando la Asamblea Nacional este convencida de que el gobierno esta en disposicion para disponer la expropiacion.

"Visto, pues, desde este punto el asunto, no es malo autorizar, fijar los limites, ni mucho menos es malo autorizar a la Legislatura para dictar leyes de expropiacion.

"Pero voy a molestaros por un minuto mas. Se ha mentado aqui con algun exito esta mañana—y digo con exito porque he oido algunos aplausos—se ha mentado la posibilidad de que los comunistas hagan un issue de esta disposicion que existe en el draft; podran los comunistas pedir los votos del electorado para ser ellos los que dicten las leyes fijando el limite del terreno y ordenen la expropiacion? ¿Que argumento mas bonito si tuviera base! Lo mas natural, creo yo, es que el pueblo, el electorado, al ver que no es una Asamblea Constituyente comunista la que ha puesto esta disposicion, otorgue sus votos a esta misma Asamblea Nacional, o a esos candidates no comunistas. ¿Quien esta en disposicion de terminar mejor una obra, aquel que ha trazado y puesto los primeros pilares, o aquel que viene de gorra al final de la obra para decir: 'Aqui estoy para poner el tejado?'"

"Es sensible, sin embargo, que una cuestion de importancia tan nacional como esta, pretendamos ligarla a los votos de los comunistas. El comunismo no ha de venir porque nosotros fijemos los limites de terreno; no ha de venir porque prohibamos los latifundios mediante expropiacion forzosa, no; ha de venir precisamente por causa de los grandes propietarios de terreno, y ha de venir, queramoslo o no, porque el mundo esta evolucionando y se va a convencer de que la vida no es solamente para unos cuantos sino para todos, porque Dios nos la dio, con la libertad, el aire, la luz, la tierra para vivir (Grandes Aplausos), y por algo se ha dicho que en los comienzos de la vida humana debio haber sido fusilado, matado, a aquel primero que puso un cerco a un pedazo de tierra reclamando ser suya a propiedad.

"Por estas razones, señor Presidente, y sintiendo que mi tiempo esta para terminar, voy a dar fin a mi discurso agradeciendo a la Convencion." (Speech of Delegate Sotto.)

"I would further add, Mr. President, that this precept by limiting private individuals to holding and acquiring lands, private agricultural lands * * * is discriminatory and unjust with regard to the agriculturists. Why not, Mr. President, extend this provision also to those who are engaged in commerce and industries? Both elements amass wealth. If the purpose of the Committee, Mr. President, is to distribute the wealth in such a manner that it will not breed discontent, I see no reason for the discrimination against the agriculturist. In view of these reasons, Mr. President, I do not want to speak further and I submit this amendment because many reasons have been given already yesterday and this morning." (Speech of Delegate Sevilla.)

Delegate Sotto was not interpellated, much less contradicted, on the observation that section 3 of Article XIII does not embrace private urban lands. There is of course every reason to believe that the sense in which the terms "private agricultural lands" were employed in section 3 must be the same as that in section 5, if consistency is to be attributed to the framers of the Constitution.

We should not be concluded by the remarks, cited in the majority opinion, made by Delegate Ledesma to the effect that "the exclusion of aliens from the privilege of acquiring public agricultural lands and of owning real estate is a necessary part of the Public Land Laws," and of the statement of Delegate Montilla regarding "the complete nationalization of our lands and natural resources," because (1) the remarks of Delegate Ledesma expressly mentions "public agricultural lands" and the term "real estate" must undoubtedly carry the same meaning as the preceding words "public agricultural lands" under the principle of "ejusdem generis"; (2) Delegate Ledesma must have in mind purely "agricultural" land, since he was the Chairman of the Committee on Agricultural Development and his speech was made in connection with the national policy on agricultural lands; (3) the general nature of the explanations of both Delegate Ledesma and Delegate Montilla, cannot control the more specific clarification of Delegate Sotto that agricultural lands in section 3 do not include urban properties.

Neither are we bound to give greater force to the view (apparently based on mere mental recollections) of the Justices who were members of the Constitutional Convention than to the specific recorded manifestation of Delegate Sotto.

The decision in the case of *Mapa vs. Insular Government* (10 Phil., 175), invoked by the majority, is surely not controlling, because, first, it dealt with "agricultural public lands" and, secondly, in that case it was expressly held that the phrase "agricultural land" as used in Act No. 926 "means those public lands acquired from Spain which are not timber or mineral lands,"—the definition held to be found in section 13 of the Act of Congress of July 1, 1902.

"We hold that there is to be found in the act of Congress a definition of the phrase 'agricultural public lands,' and after a careful consideration of the question we are satisfied that the only definition which exists in said act is the definition adopted by the court below. Section 13 says that the Government shall 'make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands.' To our minds that is the only definition that can be said to be given to agricultural lands. In other words, that the phrase 'agricultural land' as used in Act No. 926 means those public lands acquired from Spain which are not timber or mineral lands." (*Mapa vs. Insular Government*, 10 Phil., 182.)

The majority, in support of their construction, invoke Commonwealth Act No. 141, enacted after the approval of the Constitution, which prohibits the alienation to foreigners of "land originally acquired in any manner under the provisions of this Act," (section 122) or "land originally acquired in any manner under the provisions of any previous Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippines with regard to public lands,' terrenos baldios y realengos, or lands of any other denomination that were actually or presumptively of the public domain." (Section 123.) They hold that the constitutional intent "is made more patent and is strongly implemented by said Act." The majority have evidently overlooked the fact that the prohibition contained in said sections refer to lands originally acquired under said Act or other legal provisions formerly in force in the Philippines with regard to public lands, which of course do not include lands not originally of the public domain. The lands that may be acquired under Act No. 141 necessarily have to be public agricultural lands, since they are the only kinds that are subject to alienation or disposition under the Constitution. Hence, even if they become private, said lands retained their original agricultural character and may not therefore be alienated to foreigners. It is only in this sense, I think, that Act No. 141 seeks to carry out and implement the constitutional objective. In the case before us, however, there is no pretense that the land bought by the appellant was originally acquired under said Act or other legal provisions contemplated therein.

The majority is also mistaken in arguing that "prior to the Constitution, under section 24 of the Public Land Act No. 2874, aliens could acquire public agricultural lands used for industrial or residential purposes, but after the Constitution and under section 23 of Commonwealth Act No. 141, the right of aliens to acquire such kind of lands is completely stricken out, undoubtedly in pursuance of the Constitutional limitation," and that "prior to the Constitution, under section 57 of the Public Land Act No. 2874, land of the public domain suitable for residence or industrial purposes could be sold or leased to aliens, but after the Constitution and under section 60 of Commonwealth Act No. 141, such land may only be leased, but not sold, to aliens, and the lease granted shall only be valid while the land is used for the purpose referred to." Section 1 of Article XIII of the Constitution speaks of "public agricultural lands" and, quite logically, Commonwealth Act No. 141, enacted after the approval of the Constitution, has to limit the alienation of its subject matter (public agricultural land, which includes public residential or industrial land) to Filipino citizens. But it is not correct to consider said Act as a legislation on, or a limitation against, the right of aliens to acquire residential land that was already of private ownership prior to the approval of the Constitution.

The sweeping assertion of the majority that "the three great departments of the Government—Judicial, Legislative and Executive—have always maintained that lands of the public domain are classified into agricultural, mineral and timber, and that agricultural lands include residential lots," is rather misleading and not inconsistent with our position. While the construction mistakenly invoked by the majority refers exclusively to lands of the public domain, our view is that private residential lands are not embraced within the terms "private agricultural land" in section 5 of Article XIII. Let us particularize in somewhat chronological order. We have already pointed out that the leading case of *Mapa vs. Insular Government*, *supra*, only held that agricultural public lands are those public lands acquired from Spain which are neither timber nor mineral lands. The opinion of the Secretary of Justice dated July 15, 1939, quoted in the majority opinion, limited itself in affirming that "residential, commercial or industrial lots forming part of the public domain * * * must be classified as agricultural." Indeed, the limited scope of said opinion is clearly pointed out in the following subsequent opinion of the Secretary of Justice dated September 25, 1941, expressly holding that "in cases involving the prohibition in section 5 of Article XIII (formerly Article XII) regarding transfer or assignment of private agricultural lands to foreigners, the opinion that residential lots are not agricultural lands is applicable."

"This is with reference to your first indorsement dated July 30, 1941, forwarding the request of the Register of Deeds of Oriental Misamis for an opinion as to whether Opinion No. 130, dated July 15, 1939, of this Department quoted in its Circular No. 28, dated May 13, 1941, holding among others, that the phrase 'public agricultural land' in section 1, Article XIII (formerly article XII) of the Constitution of the Philippines, includes residential, commercial or industrial lots for purposes of their disposition, amends or supersedes a decision or order of the fourth branch of the Court of First Instance of the City of Manila rendered pursuant to section 200 of the Administrative Code which holds that a residential lot is not an agricultural land, and, therefore, the prohibition in section 5, Article XIII (formerly Article XII) of the Constitution of the Philippines does not apply. "There is no conflict between the two opinions.

"Section 1, Article XIII (formerly article XII) of the Constitution of the Philippines, speaks of public agricultural lands while section 5 of the same article treats of private agricultural lands. A holding, therefore, that a residential lot is not private agricultural land within the meaning of that phrase as found in section 5 of Article XIII (formerly Article XII) does not conflict with an opinion that residential, commercial or industrial lots forming part of the public domain are included within the phrase 'public agricultural land' found in section 1, Article XIII (formerly Article XII) of the Constitution of the Philippines. In cases involving the prohibition in section 5 of Article XIII (formerly Article XII) regarding transfer or assignment of private agricultural lands to foreigners, the opinion that residential lots are not agricultural lands is applicable. In cases involving the prohibition in section 1 of Article XIII (formerly Article XII) regarding disposition in favor of, and exploitation, development or utilization by, foreigners of public agricultural lands, the opinion that residential, commercial or industrial lots forming part of the public domain are included within the phrase 'public agricultural land' found in said section 1 of Article XIII (formerly Article XII) governs."

Commonwealth Act No. 141, passed after the approval of the Constitution, limited its restriction against transfers in favor of aliens to public agricultural lands or to lands originally acquired under said Act or other legal provisions formerly in force in the Philippines with regard to public lands, which necessarily have to be public agricultural lands. On November 29, 1943, the Court of Appeals rendered a decision affirming that of the Court of First Instance of Tarlac in a case in which it was held that private residential lots are not included in the prohibition in section 5 of Article XIII. (CA G. R. No. 29.) During the Japanese occupation, the Constitution of the then Republic of the Philippines contained an almost verbatim reproduction of said section 5 of Article XIII; and the then National Assembly passed an Act providing that "no natural or juridical person who is not a Filipino citizen shall acquire directly or indirectly any title to private lands (which are not agricultural lands) including buildings and other improvements thereon or leasehold rights on said lands, except by legal succession of proper cases, unless authorized by the President of the Republic of the Philippines." (Off. Gaz., Vol. I, p. 497, February,

1944.) It is true that the Secretary of Justice in 1945 appears to have rendered an opinion on the matter, but it cannot have any persuasive force because it merely suspended the effect of the previous opinion of his Department pending judicial determination of the question. Very recently, the Secretary of Justice issued a circular adopting in effect the opinion of his Department rendered in 1941. Last but not least, since the approval of the Constitution, numerous transactions involving transfers of private residential lots to aliens had been allowed to be registered without any opposition on the part of the Government. It will thus be seen that, contrary to what the majority believe, our Government has constantly adopted the view that private residential lands do not fall under the limitation contained in section 5 of Article XIII of the Constitution.

I do not question or doubt the nationalistic spirit permeating the Constitution, but I will not permit myself to be blinded by any sentimental feelings or conjectural considerations to such a degree as to attribute to any of its provisions a construction not justified by or beyond what the plain written words purport to convey. We need not express any unnecessary concern over the possibility that entire towns and cities may come to the hands of aliens, as long as we have faith in our independence and in our power to supply any deficiency in the Constitution either by its amendment or by Congressional action.

There should really have been no occasion for writing this dissent, because the appellant, with the conformity of the appellee, had filed a motion for the withdrawal of the appeal and the same should have been granted out right. In *Co Chiong vs. Dinglasan* (p. 122, ante), decided only a few days ago, we reiterated the well-settled rule that "a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid unless such question is raised by the parties, and that when it is raised, if the record also presents some other ground upon which the court may rest its judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises in which a decision upon such question will be unavoidable." In other words, a court will always avoid a constitutional question, if possible. In the present case, that course of action was not only possible but absolutely imperative. If appellant's motion for withdrawal had been opposed by the appellee, there might be some reasons for its denial, in view of section 4 of Rule 52 which provides that after the filing of appellee's brief, "the withdrawal may be allowed by the court in its discretion." At any rate, this discretion should always be exercised in favor of a withdrawal where a constitutional question will thereby be avoided.

In this connection, let us describe the proceedings (called "arbitrary and illegal" by Mr. Justice Tuason) that led to the denial of the motion for withdrawal. During the deliberation in which all the eleven members were present, seven voted to allow and four to deny. Subsequently, without any previous notice and when Mr. Justice Hontiveros was absent, the matter was again submitted to a vote, and one Justice (who previously was in favor of the withdrawal) reversed his stand, with the result that the votes were five to five. This result was officially released and the motion denied under the technicality provided in Rule of Court No. 56, section 2. It is very interesting to observe that Mr. Justice Hontiveros, who was still a member of the Court and could have attended the later deliberation, if notified and requested, previously voted for the granting of the motion. The real explanation for excluding Mr. Justice Hontiveros, against my objection, and for the reversal of the vote of one Justice who originally was in favor of the withdrawal is found in the confession made in the majority opinion to the effect that the circular of the Department of Justice instructing all registers of deeds to accept for registration transfers of residential lots to aliens, was an "interference with the regular and complete exercise by this Court of its constitutional functions," and that "if we grant the withdrawal, the result is that petitioner-appellant Alexander A. Krivenko wins his case, not by a decision of this Court, but by the decision or circular of the Department of Justice issued while this case was pending before this Court." The zealotry thus shown in denying the motion for withdrawal is open to question. The denial of course is another way of assuming that the petitioner appellant and the Solicitor General had connived with the Department of Justice in a scheme not only to interfere with the functions of this Court but to dispose of the national patrimony in favor of aliens.

In the absence of any injunction from this Court, we should recognize the right of the Department of Justice to issue any circular it may deem legal and proper on any subject, and the corollary right of the appellant to take advantage thereof. What is most regrettable is the implication that the Department of Justice, as a part of the Executive Department, cannot be as patriotic and able as this Court in defending the Constitution. If the circular in question is objectionable, the same can be said of the opinion of the Secretary of Justice in 1945 in effect prohibiting the registration of transfers of private residential lots in favor of aliens, notwithstanding the pendency in this Court of the case of *Oh Cho vs. Director of Lands* (43 Off. Gaz., 866), wherein, according to the appellant, the only question raised was whether or not "an alien can acquire a residential lot and register it in his name," and notwithstanding the fact that in said case the appealed decision was in favor of the alien applicant and that, as hereinbefore stated, the Court of Appeals in another case (CAG. R. No. 29) had rendered in 1943 a decision holding that private residential lots are not included in the prohibition in section 5 of Article XIII of the Constitution. And yet this Court, failing to consider said opinion as an "interference," chose to evade the only issue raised by the appellant and squarely met by the appellee in the *Oh Cho* case which already required a decision on the constitutional question resolved in the case at bar against, so to say, the will of the parties litigant. In other words, the majority did not allow the withdrawal of the present appeal not so much as to dispose of it on the merits, but to annul the circular of the Department of Justice which is, needless to say, not involved in this case. I cannot accept the shallow excuse of the majority that the denial of the motion for withdrawal was prompted by the fear that "our indifference of today might signify a permanent offense to the Constitution," because it carries the rather immodest implication that this Court has a monopoly of the virtue of upholding and enforcing, or supplying any deficiency in, the Constitution. Indeed, the fallacy of the implication is made glaring when Senator Francisco lost no time in introducing a bill that would clarify the constitutional provision in question in the sense desired by the majority. Upon the other hand, the majority should not worry about the remoteness of the opportunity that will enable this Court to pass upon this constitutional question, because we can take advance notice of the fact that in *Rellosa vs. Gaw Chee Hun* (49 Off. Gaz., 4345), in which the parties have already submitted their briefs, that question is again squarely presented. But even disregarding said case, I am sure that, in view of the recent newspaper discussion which naturally reached the length and breadth of the country, there will be those who will dispute their sales of residential lots in favor of aliens and invoke the constitutional prohibition.

DISSENTING OPINION

BENGZON, J.:

It is unnecessary to deliver at this time any opinion about the extent of the constitutional prohibition. Both parties having agreed to write *finis* to the litigation, there is no obligation to hold forth on the issue. It is not our mission to give advice to other persons who might be interested to know the validity or invalidity of their sales or purchases. That is the work of lawyers and jurisconsults.

There is much to what Mr. Justice Padilla explains regarding any eagerness to solve the constitutional problem. It must be remembered that the other departments of the Government are not prevented from passing on constitutional questions arising in the exercise of their official powers. (Cooley, *Constitutional Limitations*, 8th ed., p. 101.) This Tribunal was not established, nor is it expected to play the role of an overseer to supervise the other Government departments, with the obligation to seize any opportunity to correct what we may believe to be erroneous application of the constitutional mandate. I cannot agree to the suggestion that the way the incumbent Secretary of Justice has interpreted the fundamental law, no case will ever arise before the courts, because the registers of deeds under his command, will transfer on their books all sales to aliens. It is easy to perceive several

probabilities: (1) a new secretary may entertain opposite views; (2) parties legally affected—like heirs or creditors of the seller—may wish to avoid the conveyance to aliens, invoking the constitutional inhibition. Then, in a truly contested case, with opposing litigants actively arguing their sides we shall be in a position to do full justice. It is not enough that briefs—as in this case—have been filed; it is desirable, perhaps essential, to make sure that in a motion for reconsideration, or in a rehearing in case of tie, our attention shall be invited to points inadequately touched or improperly considered.

It is stated that sales to aliens of residential lots are currently being effected. No matter. Those sales will be subject to the final decision we shall reach in a properly submitted litigation. To spell necessity out of the existence of such conveyances, might amount to begging the issue, with the assumption that such transfers are obviously barred by the Organic Law. And yet sales to foreigners of residential lots have taken place since our Constitution was approved in 1935, and no one questioned their validity in Court until nine years later in 1945, after the Japanese authorities had shown distaste for such transfers.

The Court should have, I submit, ample time to discuss this all-important point, and reflect upon the conflicting politico-economic philosophies of those who advocate national isolation against international cooperation, and vice-versa. We could also delve into several aspects necessarily involved, to wit:

(a) Whether the prohibition in the Constitution operated to curtail the freedom to dispose of landowners at the time of its adoption; or whether it merely affected the rights of those who should become landowners after the approval of the Constitution;^[1]

(b) What consequences would a ruling adverse to aliens have upon our position and commitments in the United Nations Organization, and upon our treaty-making negotiations with other nations of the world; and

(c) When in 1941 Krivenko acquired this land he was a Russian citizen. Under the treaties between the United States and Russia, were Russian nationals allowed to acquire residential lots in places under the jurisdiction of the United States? If so, did our Constitution have the effect of modifying such treaty, during the existence of the Commonwealth Government?

The foregoing views and doubts induced me to vote for dismissal of the appeal as requested by the parties, and for withholding of any ruling on the constitutional prohibition. However, I am now ready to cast my vote. I am convinced that the organic law bans the sales of agricultural lands as they are popularly understood—not including residential, commercial, industrial or urban lots. This belief is founded on the reasons ably expounded by Mr. Justice Paras, Mr. Justice Padilla and Mr. Justice Tuason. I am particularly moved by the consideration that a restricted interpretation of the prohibition, if erroneous or contrary to the people's desire, may be remedied by legislation amplifying it; whereas a liberal and wide application, if erroneous, would need the cumbersome and highly expensive process of a constitutional amendment.

[1] Cf. *Buchanan vs. Worley*, 245 U. S. 60, 38 S. Ct. 16.

DISSENTING OPINION

PADILLA, J.:

The question submitted for decision is whether a parcel of land of private ownership suitable or intended for residence may be alienated or sold to an alien.

Section 5, Article XIII, of the Constitution provides:

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.

The majority holds that a parcel of land of private ownership suitable or intended or used for residence is included in the term "private agricultural land" and comes within the prohibition of the Constitution. In support of the opinion that lands of private ownership suitable for residence are included in the term "private agricultural land" and cannot be alienated or sold to aliens, the majority invokes the decision of this Court in *Mapa vs. Insular Government* (10 Phil., 175), which holds that urban lands of the public domain are included in the term "public agricultural land." But the opinion of the majority overlooks the fact that the inclusion by this Court of public lands suitable for residence in the term "public agricultural land" was due to the classification made by the Congress of the United States in the Act of 1 July 1902, commonly known as the Philippine Bill. In said Act, lands of the public domain were classified into agricultural, timber and mineral. The only alienable or disposable lands of the public domain were those belonging to the first class. Hence a parcel of land of the public domain suitable for residence, which was neither timber nor mineral, could not be disposed of or alienated unless classified as public agricultural land. The susceptibility of a residential lot of the public domain of being cultivated is not the real reason for the inclusion of such lot in the classification of public agricultural land, for there are lands, such as foreshore lands, which would hardly be susceptible of cultivation (*Ibañez de Aldecoa vs. Insular Government*, 13 Phil., 159, 167-168), and yet the same come under the classification of public agricultural land. The fact, therefore, that parcels of land of the public domain suitable for residence are included in the classification of public agricultural land, is not a safe guide or index of what the framers of the Constitution intended to mean by the term "private agricultural land." It is contrary to the rules of statutory construction to attach technical meaning to terms or phrases that have a common or ordinary meaning as understood by the average citizen.

At the time of the adoption of the Constitution (8 February 1935), the Public Land Act in force was Act No. 2874. Under this Act, only citizens of the Philippine Islands or of the United States and corporations or associations described in section 23 thereof, and citizens of countries the laws of which grant to citizens of the Philippine Islands the same right to acquire public land as to their own citizens, could acquire by purchase agricultural land of the public domain (section 23, Act No. 2874). This was the general rule. There was an exception. Section 24 of the Act provides:

No person, corporation, association or partnership other than those mentioned in the last preceding section may acquire or own agricultural public land or land of any other denomination or classification, not used for industrial or residence purposes, that is at the time or was originally, really or presumptively, of the public domain, or any permanent improvement thereon, or any real right on such land and improvement: Provided, however, That persons, corporations, associations, or partnerships which, at the date upon which this Act shall take effect, hold agricultural public lands or land of any other denomination not used for industrial or residence purposes, that belonged originally, really or presumptively, to the public domain, or permanent improvements on such lands, or a real right upon such lands and improvements, having acquired the same under the laws and regulations in force at the date of such acquisition, shall be authorized to continue holding the same as if such persons, corporations, associations, or partnerships were qualified under the last preceding section; but they shall not encumber, convey, or alienate the same to persons, corporations, associations or partnerships not included in section twenty-three of this Act, except by reason of hereditary succession, duly legalized and acknowledged by competent Courts. (Italics supplied.)

Section 57 of the Act, dealing with lands of the public domain suitable for residential, commercial, industrial, or

other productive purposes other than agricultural, provides :

Any tract of land comprised under this title may be leased or sold, as the case may be, to any person, corporation, or association authorized to purchase or lease public lands for agricultural purposes. * * * Provided further, That any person, corporation, association, or partnership disqualified from purchasing public land for agricultural purposes under the provisions of this Act, may purchase or lease land included under this title suitable for industrial or residence purposes, but the title or lease granted shall only be valid while such land is used for the purposes referred to. (*Italics supplied.*)

Section 121 of the Act provides:

"No land originally acquired in any manner under the provisions of the former Public Land Act or of any other Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippine Islands with regard to public lands, terrenos baldios y realengos, or lands of any other denomination that were actually or presumptively of the public domain, or by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corporations, or associations who may acquire land of the public domain under this Act; * * * Provided, however, That this prohibition shall not be applicable to the conveyance or acquisition by reason of hereditary succession duly acknowledged and legalized by competent Courts, nor to lands and improvements acquired or held for industrial or residence purposes, while used for such purposes: * * * (*Italics supplied.*)

Under and pursuant to the above quoted provisions of Act No. 2874, lands of the public domain, that were neither timber nor mineral, held for industrial or residence purposes, could be acquired by aliens disqualified from acquiring by purchase or lease public agricultural lands (sections 24, 57, 121, Act No. 2874). The delegates to the Constituent Assembly were familiar with the provisions of the Public Land Act referred to. The prohibition to alienate public agricultural lands to disqualified persons, corporations or associations did not apply to "lands and improvements acquired or held for industrial or residence purposes, while used for such purposes." Even under the provisions of Act No. 926, the first Public Land Act, lots for town-sites could be acquired by any person irrespective of citizenship, pursuant to section 47 of the said Act. In spite of the nationalistic spirit that pervades all the provisions of Act No. 2874, the Philippine Legislature did not deem it necessary to exclude aliens from acquiring and owning lands of the public domain suitable for industrial or residence purposes. It adopted the policy of excluding aliens from acquiring agricultural lands of the public domain not "suitable for residential, commercial, industrial, or other productive purposes," which, together with timber, mineral and private agricultural lands, constitute the main stay of the nation. Act No. 2874 was in force for nearly sixteen years—from 1919 to 1935. There is nothing recorded in the journals of proceedings of the Constituent Assembly regarding the matter which would have justified a departure from the policy theretofore adopted.

If under the law in force at the time of the adoption of the Constitution, aliens could acquire by purchase or lease lands of the public domain, that were neither timber nor mineral, held for industrial or residence purposes, how can it be presumed that the framers of the Constitution intended to exclude such aliens from acquiring by purchase private lands suitable for industrial or residence purposes? If pursuant to the law in force at the time of the adoption of the Constitution, lands of the public domain and improvements thereon acquired or held for industrial or residence purposes were not included in the prohibition found in section 121 of Act No. 2874, there is every reason for believing that the framers of the Constitution, who were familiar with the law then in force, did not have the intention of applying the prohibition contained in section 5, Article XIII, of the Constitution to lands of private ownership suitable or intended or used for residence, there being no thing recorded in the journals of proceedings of the Constituent Assembly regarding the matter which, as above stated, would have justified a departure from the policy then existing. If the term "private agricultural land" comprehends lands of private ownership suitable or intended or used for residence, as held by the majority, there was no need of implementing

a self-executory prohibition found in the Constitution. The prohibition to alienate such lands found in section 123 of Commonwealth Act No. 141 is a clear indication and proof that section 5, Article XIII, of the Constitution does not apply to lands of private ownership suitable or intended or used for residence. The term "private agricultural land" means privately owned lands devoted to cultivation, to the raising of agricultural products, and does not include urban lands of private ownership suitable for industrial or residence purposes. The use of the adjective "agricultural" has the effect of excluding all other private lands that are not agricultural. Timber and mineral lands are not, however, included among the excluded, because these lands could not and can never become private lands. From the land grants known as *caballerias* and *peonias* under the Laws of Indies down to those under the Royal Decrees of 25 June 1880 and 13 February 1894, the Philippine Bill, Act No. 926, the Jones Law, Act No. 2874, the Constitution, and Commonwealth Act No. 141, timber and mineral lands have always been excluded from alienation. The repeal by sections 23, 60, 123 of Commonwealth Act No. 141 of the exception provided for in sections 24, 57, 121 of Act No. 2874, did not change the meaning of the term "private agricultural land," as intended by the framers of the Constitution and understood by the people that adopted it.

The next question is whether the court below was justified under the law in confirming the refusal of the Register of Deeds of Manila to record the sale of the private land for residence purposes to the appellant who is an alien.

There is no evidence to show the kind of land, the deed of sale of which is sought to be recorded by the appellant—whether it is one of those described in section 123 of Commonwealth Act No. 141; or a private land that had never been a part of the public domain (*Cariño vs. Insular Government*, 212 U. S., 449; *Oh Cho vs. Director of Lands*, 43 Off. Gaz., 866). If it is the latter, the prohibition of section 123 of Commonwealth Act No. 141 does not apply. If it is the former, section 123 of Commonwealth Act No. 141, which provides that—

No land originally acquired in any manner under the provisions of any previous Act, ordinance, royal order, royal decree, or any other provision of law formerly in force in the Philippines with regard to public lands, *terrenos baldios y realengos*, or lands of any other denomination that were actually or presumptively of the public domain, or; by royal grant or in any other form, nor any permanent improvement on such land, shall be encumbered, alienated, or conveyed, except to persons, corporations or associations who may acquire land of the public domain under this Act or to corporate bodies organized in the Philippines whose charters authorize them to do so: * * *

is similar in nature to section 121 of Act No. 2874. This Court held the last mentioned section unconstitutional, for it violates section 3 of the Act of Congress of 29 August 1916, commonly known as the Jones Law (*Central Capiz vs. Ramirez*, 40 Phil., 883). Section 123 of Commonwealth Act No. 141, following the rule laid down in the *aforecited* case, must also be declared unconstitutional, for it violates section 21 (1), Article VI, of the Constitution, which is exactly the same as the one infringed upon by section 121 of Act No. 2874. This does not mean that a law may not be passed by Congress to prohibit alienation to foreigners of urban lands of private ownership; but in so doing, it must avoid offending against the constitutional provision referred to above.

Before closing, I cannot help but comment on the action taken by the Court in considering the merits of the case, despite the withdrawal of the appeal by the appellant, consented to by the appellee. If discretion was to be exercised, this Court did not exercise it wisely. Courts of last resort generally avoid passing upon constitutional questions if the case where such questions are raised may be decided on other grounds. Courts of last resort do not express their opinion on a constitutional question except when it is the very *lis mota* (*Yangco vs. Board of Public Utility Commissioners*, 36 Phil., 116, 120; *Co Chiong vs. Dinglasan*, p. 122, *ante*). Moreover, the interpretation of the provisions of the Constitution is no exclusive of the courts. The other coordinate branches of the government may interpret such provisions acting on matters coming within their jurisdiction. And although such interpretation is only persuasive and not binding upon the courts, nevertheless they cannot be deprived of

such power. Of course, the final say on what is the correct interpretation of a constitutional provision must come from and be made by this Court in an appropriate action submitted to it for decision. The correct interpretation of a constitutional provision is that which gives effect to the intent of its framers and primarily to the understanding of such provision by the people that adopted it. This Court is only an interpreter of the instrument, which embodies what its framers had in mind and especially what the people understood it to be when they adopted it. The eagerness of this Court to express its opinion on the constitutional provision involved in this case, notwithstanding the withdrawal of the appeal, is unusual for a Court of last resort. It seems as if it were afraid to be deprived by the other coordinate branches of the government of its prerogative to pass upon the constitutional question herein involved. If all the members of the Court were unanimous in the interpretation of the constitutional provision under scrutiny, that eagerness might be justified, but when some members of the Court do not agree to the interpretation placed upon such provision, that eagerness becomes recklessness. The interpretation thus placed by the majority of the Court upon the constitutional provision referred to will be binding upon the other coordinate branches of the government. If, in the course of time, such opinion should turn out to be erroneous and against the welfare of the country, an amendment to the Constitution—a costly process— would have to be proposed and adopted. But, if the Court had granted the motion for the withdrawal of the appeal, it would not have to express its opinion upon the constitutional provision in question. It would let the other coordinate branches of the Government act according to their wisdom, foresight and patriotism. They, too, possess those qualities and virtues. These are not of the exclusive possession of the members of this Court. The end sought to be accomplished by the decision of this Court may be carried out by the enactment of a law. And if the law should turn out to be against the well being of the people, its amendment or repeal would not be as costly a process as a constitutional amendment. In view of the denial by this Court of the motion to dismiss the appeal, as prayed for by the appellant and consented to by the appellee, I am constrained to record my opinion that, for the reasons herein before set forth, the judgment under review should be reversed.

DISSENTING OPINION

TUASON, J.:

The decision concludes with the assertion that there is no choice. "We are construing" it says, "the Constitution as we see it and not as we may wish it to be. If this is the solemn mandate of the Constitution, we cannot compromise it even in the name of equity." We wish deep in our heart that we were given the light to see as the majority do and could share their opinion. As it is, we perceive things the other way around. As we see it, the decision bypassed what according to our humble understanding is the plain intent of the Constitution and groped out of its way in search of the ideal result. The denial by this Court of the motion to withdraw the appeal to which the Solicitor General gave his conformity collides with the professed sorrow that the decision cannot be helped.

Section 5, Article XIII, of the Constitution reads:

"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."

The sole and simple question at issue is, what is the meaning of the term "agricultural land" as used in this section? Before answering the question, it is convenient to refresh our memory of the pertinent rule in the interpretation of constitutions as expounded in decisions of courts of last resort and by law authors.

"It is a cardinal rule in the interpretation of constitutions that the instrument must be as construed so to give effect to the intention of the people who adopted it. This intention is to be sought in the constitution itself, and

the apparent meaning of the words employed is to be taken as expressing it, except in cases where the assumption would lead to absurdity, ambiguity, or contradiction." Black on Interpretation of Laws, 2d ed., p. 20.)

"Every word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it. Constitutions are not designed for metaphysical or logical subtleties, for niceties of expression, for critical propriety, for elaborate shades of meaning, or for the exercise of philosophical acuteness or judicial research. They are instruments of a practical nature founded on the common business of human life adapted to common wants, designed for common use, and fitted for common understandings. The people make them, the people adopt them, the people must be supposed to read them with the help of common sense, and cannot be presumed to admit in them any recondite meaning or any extraordinary gloss." (1 Story, Const, sec. 451.)

Marshall, Ch. J., says:

"The framers of the Constitution, and the people who adopted it, 'must be understood to have employed words in their natural sense, and to have intended what they have said.'" (Gibbons vs. Ogdon, 9 Wheat, 1, 188; 6 Law. ed., 23)

"Questions as to the wisdom, expediency, or justice of constitutional provisions afford no basis for construction where the intent to adopt such provisions is expressed in clear and unmistakable terms. Nor can construction read into the provisions of a constitution some unexpressed general policy or spirit, supposed to underline and pervade the instrument and to render it consonant to the genius of the institutions of the state. The courts are not at liberty to declare an act void because they deem it opposed to the spirit of the Constitution." (12 C. J., 702703.)

There is no obscurity or ambiguity in the section of the Constitution above quoted, nor does a literal interpretation of the words "agricultural land" lead to any in the majority opinion, the phrase has no technical meaning, and the same could not have been used in any sense other than that in which it is understood by the men in the street.

That there are lands of private ownership will not be denied, in spite of the fiction that all lands proceed from the sovereign. And, that lands of private ownership are known as agricultural, residential, commercial and industrial, is another truth which no one can successfully dispute. In prohibiting the alienation of private agricultural land to aliens, the Constitution, by necessary implication, authorizes the alienation of other kinds of private property. The express mention of one thing excludes all others of the same kind.

Let us then ascertain the meaning of the word "agricultural" so that by process of elimination we can see what lands do not fall within the purview of the constitutional inhibition. Webster's New International Dictionary defines this word as "of or pertaining to agriculture connected with, or engaged in, tillage; as, the agricultural class; agricultural implements, wages, etc." According to this definition and according to the popular conception of the word, lands in cities and towns intended or used for buildings or other kinds of structure are never understood to mean agricultural lands. They are either residential, commercial, or industrial lands. In all city planings, communities are divided into residential, commercial and industrial sections. It would be extremely out of the ordinary, not to say ridiculous, to imagine that the Constitutional Convention considered a lot on the Escolta with its improvement as agricultural land.

If extrinsic evidence is needed, a reference to the history of the constitutional provision under consideration will dispel all doubts that urban lands were in the minds of the framers of the Constitution as properties that may be assigned to foreigners.

Dean Aruego, himself a member of the Constitutional Convention, is authority for the statement that the

committee on nationalization and preservation of lands and other natural resources in its report recommended the incorporation into the Constitution of the following provision:

"Sec. 4. Save in cases of hereditary succession, no land of private ownership shall be transferred or assigned by the owner thereof except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippine Islands; and the Government shall regulate the transfer or assignment of land now owned by persons, or corporations, or associations not qualified under the provisions of this Constitution to acquire or hold lands in the Philippine Islands."

In Article XIII, entitled "General Provisions," of the first draft of the Constitution, the subcommittee of seven embodied the following provision which had been recommended in the reports of the committee on agricultural development, national defense, industry, and nationalization of public utilities, and of the committee on the nationalization and preservation of lands and other natural resources:

"Sec. 16. Save in cases of hereditary succession, no land of private ownership shall be transferred or assigned by the owner thereof except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

But on January 22, 1935, the subcommittee of seven submitted to the Convention a revised draft of the article on General Provisions of the first draft, which revised draft had been prepared by the committee in consultation with President Quezon. The revised draft as it touches private lands provides as follows:

"Save in cases of hereditary succession, no agricultural land of private ownership shall be transferred or assigned by the owner thereof except to individuals, corporations, or associations qualified to acquire or hold lands, of the public domain in the Philippine Islands." (2 The Framing of the Philippine Constitution, Aruego, 595599.)

The last-quoted proposal became section 5 of Article XIII of the Constitution in its final form with slight alteration in the phraseology.

It will thus be seen that two committees in their reports and the subcommittee of seven in its first draft of the Constitution all proposed to prescribe the transfer to non-Filipino citizens of any land of private ownership without regard to its nature or use, but that the last mentioned subcommittee later amended that proposal by putting the word "agricultural" before the word "land." What are we to conclude from this modification? Its self-evident purpose was to confine the prohibition to agricultural lands, allowing the ownership by foreigners of private lands that do not partake of agricultural character. The insertion of the word "agricultural" was studied and deliberated, thereby eliminating any possibility that its implication was not comprehended.

In the following paragraphs we shall, in our inadequate way, attempt to show that the conclusions in this Court's decision are erroneous either because the premises are wrong or because the conclusions do not follow the premises.

According to the decision, the insertion of the word "agricultural" was not intended to change the scope of the provision. It says that "the wording of the first draft was amended for no other purpose than to clarify concepts and avoid uncertainties."

If this was the intention of the Constitutional Assembly, that body could not have devised a better way of messing up and obscuring the meaning of the provision than what it did. If the purpose was "to clarify concepts and avoid uncertainties," the insertion of the word "agricultural" before the word "land" produced the exact opposite of the result which the change was expected to accomplish—as witness the present sharp and bitter controversy which would not have arisen had they let well enough alone.

But the assumption is untenable. To brush aside the introduction of the word "agricultural" into the final draft as "merely one of words" is utterly unsupported by evidence, by the text of the Constitution, or by sound principles of construction. There is absolutely no war rant for the statement that the Constitutional Convention, which was guided by wise men, men of ability and experience in different fields of endeavor, used the term after "mature deliberation and reflection and after consultation with the President, without intending to give it its natural signification and connotation. "We are not at liberty to presume that the framers of the Constitution, or the people who adopted it, did not understand the force of language." (People vs. Rathbone, 32 N. Y. S., 108.) The Constitution will be scanned in vain for any reasonable indication that its authors made the change with intention that it should not operate according to the rules of grammar and the ordinary process of drawing logical inferences. The theory is against the presumption, based on human experience, that the framers of a constitution "have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, leaving as little as possible to implication." (1 Cooley's Constitutional Limitations, 8th ed., 128, 129.) "As men, whose intention require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said." (Gibbons vs. Ogden, ante.)

When instead of prohibiting the acquisition of private land of any kind by foreigners, as originally proposed, the prohibition was changed to private agricultural lands, the average man's faculty of reasoning tells him that other lands may be acquired. The elementary rules of speech with which men of average intelligence and, above all, the members of the Constitutional Assembly were familiar, inform us that the object of a descriptive adjective is to specify a thing as distinct from another. It is from this process of reasoning that the maxim *expressio unius est exclusio alterius* stems; a familiar rule of interpretation often quoted, and admitted as agreeable to natural reason.

If then a foreigner may acquire private lands that are not agricultural, what lands are they? Timber land or mineral land, or both? As the decision itself says these lands are not susceptible of private ownership, the answer can only be residential, commercial, industrial or other lands that are not agricultural. Whether a property is more suitable and profitable to the owner as residential, commercial or industrial than if he devotes it to the cultivation of crops is a matter that has to be decided according to the value of the property, its size, and other attending circumstances.

The main burden of this Court's argument is that, as lands of the public domain which are suitable for home building are considered agricultural land, the Constitution intended that private residential, commercial or industrial lands should be considered also agricultural lands. The Court says that "what the members of the Constitutional Convention had in mind when they drafted the Constitution was this well-known classification (timber, mineral and agricultural) and its technical meaning then prevailing."

As far as private lands are concerned, there is no factual or legal basis for this assumption. The classification of public lands was used for one purpose not contemplated in the classification of private lands. At the outset, it should be distinctly made clear that it was this Court's previous decisions and not an act of Congress which declared that public lands which were not forest or mineral were agricultural lands. Little reflection on the background of this Court's decisions and the nature of the question presented in relation to the peculiar provisions of the enactments which came up for construction, will bring into relief the error of applying to private lands the classification of public lands.

In the first place, we cannot classify private lands in the same manner as public lands for the very simple and manifest reason that only lands pertaining to one of the three groups of public lands—agricultural—can find their way into the hands of private persons. Forest lands and mineral lands are preserved by the State for itself and for

posterity. Granting what is possible, that there are here and there forest lands and mineral lands to which private persons have obtained patents or titles, it would be pointless to suppose that such properties are the ones which section 5 of Article XIII of the Constitution wants to distinguish from private agricultural lands as lienable. The majority themselves will not admit that the Constitution which forbids the alienation of private agricultural lands allows the conveyance of private forests and mines.

In the second place, public lands are classified under special conditions and with a different object in view. Classification of public lands was and is made for purposes of administration; for the purpose principally of segregating lands that may be sold from lands that should be conserved. The Act of July 1, 1902, of the United States Congress designated what lands of the public domain might be alienated and what should be kept by the State. Public lands are divided into three classes to the end that natural resources may be used without waste. Subject to some exceptions and limitation, agricultural lands may be disposed of by the Government. Preservation of forest and mineral lands was and is a dominant preoccupation. These are important parts of the country's natural resources. Private non-agricultural land does not come within the category of natural resources. Natural resources are denned in Webster's Standard Dictionary as materials supplied or produced by nature. The United States Congress evinced very little if any concern with private lands.

It should also be distinctly kept in mind that the Act of Congress of the United States above mentioned was an organic law and dealt with vast tracts of untouched public lands. It was enacted by a Congress whose members were not closely familiar with local conditions affecting lands. Under the circumstances, it was natural that the Congress employed "words in a comprehensive sense as expressive of general ideas rather than of finer shades of thought or of narrow distinctions." The United States Congress was content with laying down a broad outline governing the administration, exploitation and disposition of the public wealth, leaving the details to be worked out by the local authorities and courts entrusted with the enforcement and interpretation of the law.

It was as a result of this broad classification that questions crept for a definition of the status of scattered small parcels of public lands that were neither forest, mineral, nor agricultural, and with which the Congress had not bothered itself to mention separately or specifically. This Court, forced by the nature of its duty to decide legal controversies, ruled that public lands that were fit for residential purposes, public swamps and other public lands that were neither forest nor mineral, were to be regarded as agricultural lands. In other words, there was an apparent void, often inevitable in a law or constitution, and this Court merely filled that void. It should be noted that this Court did not say that agricultural lands and residential lands are the same or alike in their character and use. It merely said that for the purpose of judging their alienability, residential, commercial or industrial lands should be brought under the class of agricultural lands.

On the other hand, section 5 of Article XIII of the Constitution treats of private lands with a different aim. This Court is not now confronted with any problem for which there is no specific provision, such as faced it when the question of determining the character of public residential land came up for decision. This Court is not called to rule whether a private residential land is forest, mineral or agricultural. This Court is not, in regard to private lands, in the position where it found itself with reference to public lands, compelled by the limited field of its choice for a name to call public residential lands, agricultural lands. When it comes to determining the character of private non-agricultural lands, the Court's task is not to compare it with forests, mines and agricultural lands, to see which of these bears the closest resemblance to the land in question. Since there are no private timber or mineral lands, and if there were, they could not be transferred to foreigners, and since the object of section 5 of Article XIII of the Constitution is radically at variance with that of the laws covering public lands, we have to have different standards of comparison and have to look of the intent of this constitutional provision from a different angle and perspective. When a private non agricultural land demands to know where it stands, we do not

inquire, is it mineral, forest or agricultural? We only ask, is it agricultural? to ascertain whether it is within the inhibition of section 5 of Article XIII.

The last question in turn resolves itself into what is understood by agricultural land. Stripped of the special considerations which dictated the classification of public lands into three general groups, there is no alternative but to take the term "agricultural land" in its natural and popular signification; and thus regarded, it imports a distinct connotation which involves no absurdity and no contradiction between different parts of the organic law. Its meaning is that agricultural land is specified in section 5 of Article XIII to differentiate it from lands that are used or are more suitable for purposes other than agriculture.

It would profit us to take notice of the admonition of two of the most revered writers on constitutional law, Justice Story and Professor Cooley:

"As a general thing, it is to be supposed that the same word is used in the same sense wherever it occurs in a constitution. Here again, however, great caution must be observed in applying an arbitrary rule; for, as Mr. Justice Story has well observed: 'It does not follow, either logically or grammatically, that because a word is found in one connection in the Constitution with a definite sense, therefore the same sense is to be adopted in every other connection in which it occurs. This would be to suppose that the framers weighed only the force of single words, as philologists or critics, and not whole clauses and objects, as statesmen and practical reasoners. And yet nothing has been more common than to subject the Constitution to this narrow and mischievous criticism. Men of ingenious and subtle minds, who seek for symmetry and harmony in language, having found in the Constitution a word used in some ' sense which falls in with their favorite theory of interpreting it, have made that the standard by which to measure its use in every other part of the instrument. They have thus stretched it, as it were, on the bed of Procrustes, lopping off its meaning when it seemed too large for their purposes, and extending it when it seemed too short. They have thus distorted it to the most unnatural shapes, and crippled where they have sought only to adjust its proportions according to their own opinions.' And he gives many instances where, in the national Constitution, it is very manifest the same word is employed in different meanings. So that, while the rule may be sound as one of presumption merely, its force is but slight, and it must readily give way to a different intent appearing in the instrument." (1 Cooley's Constitutional Limitations, 8th ed., 135.)

As to the proposition that the words "agricultural lands" have been given a technical meaning and that the Constitution has employed them in that sense, it can only be accepted in reference to public lands. If a technical import has been affixed to the term, it can not be extended to private lands if we are not to be led to an absurdity and if we are to avoid the charge that we are resorting to subtle and ingenious refinement to force from the Constitution a meaning which its framers never held. While in the construction of a constitution words must be given the technical meaning which they have acquired, the rule is limited to the "well-understood meaning" "which the people must be supposed to have had in view in adopting them." To give an example. "When the constitution speaks of an ex post facto law, it means a law technically known by that designation; the meaning of the phrase having become definite in the history of constitutional law, and being so familiar to the people that it is not necessary to employ language of a more popular character to designate it." In reality, this is not a departure from the general rule that the language used is to be taken in the sense it conveys to the popular mind, "for the technical sense in these cases is the sense popularly understood, because that is the sense fixed upon the words in legal and constitutional history where they have been employed for the protection of popular rights." (1 Cooley's Constitutional Limitations, 8th ed., 132-133.) Viewed from this angle, "agricultural land" does not possess the quality of a technical term. Even as applied to public lands, and even among lawyers and judges, how many are familiar with the decisions of this Court which hold that public swamps and public lands more appropriate for buildings and other structures than for agriculture are agricultural lands? The same can be truthfully said of

members of the Constitutional Assembly.

The speeches of delegates Montilla and Ledesma can not serve as a means of interpretation. The sentiments expressed in those speeches, like the first drafts of section 5 of Article XIII, may have reflected the sentiments of the Convention in the first stages of the deliberation or down to its close. If they were, those sentiments were relaxed and not given full sway for reasons on which we need not speculate. Speeches in support of a project can be a valuable criterion for judging the intention of a law or constitution only if no changes were afterward effected. If anything, the change in section 5 of Article XIII wrought in the face of a strong advocacy for complete and absolute nationalization of all lands, without exception, offers itself as the best proof that to the framers of the Constitution the change was not "merely one of words" but represented something real and substantial. Firm and resolute convictions are expressed in a document in strong, unequivocal and unqualified language. This is specially true when the instrument is a constitution, "the most solemn and deliberate of human writings, always carefully drawn, and calculated for permanent endurance."

The decision quotes from the Framing of the Constitution by Dean Aruego a sentence which says that one of the principles underlying the provision of Article XIII of the Constitution is "that lands, minerals, forests and other natural resources constitute the exclusive heritage of the Filipino Nation." In underlying the word lands the Court wants to insinuate that all lands without exceptions are included. This is nothing to be enthusiastic over. It is hyperbole, "a figure of speech in which the statement expresses more than the truth" but "is accepted as a legal form of expression." It is an expression that "lies but does not deceive." When we say men must light we do not mean all men, and every one knows we don't.

The decision says:

"It is true that in section 9 of said Commonwealth Act No. 141, 'alienable or disposable public lands' which are the same as 'public agricultural lands' under the Constitution, are classified into agricultural, residential, commercial, industrial and for other purposes. This simply means that the term 'public agricultural lands' has both a broad and a particular meaning. Under its broad or general meaning, as used in the Constitution, it embraces all lands that are neither timber nor mineral. This broad meaning is particularized in section 9 of Commonwealth Act No. 141 which classifies 'public agri. cultural lands' for purposes of alienation or disposition, into lands that are strictly agricultural or actually devoted to cultivation for agricultural purposes; lands that are residential; commercial; industrial; or lands for other purposes. The fact that these lands are made alienable or disposable under Commonwealth Act No. 141, in favor of Filipino citizens, is a conclusive indication of their character as public agricultural lands under said statute and under the Constitution."

If I am not mistaken in my understanding of the line of reasoning in the foregoing passage, my humble opinion is that there is no logical connection between the premise and the conclusion. What to me seems clearly to emerge from it is that Commonwealth Act No. 141, so far from sustaining the Court's theory, actually pulls down its case which it has built upon the foundation of parallel classification of public and private lands into forest, mineral and agricultural lands, and the inexistence of such things as residential, industrial or commercial lands. It is to be noted that Act No. 141, section 9, classifies disposable lands into agricultural, industrial, residential, commercial, etc. And these are lands of the public domain.

The fact that the provisions regarding alienation of private lands happens to be included in Article XIII, which is entitled "Conservation and Utilization of Natural Resources," is no ground for treating public lands and private lands on the same footing. The inference should rather be the exact reverse. Agricultural lands, whether public or private, are natural resources. But residential, commercial, and industrial lands, as we have seen, are not natural resources either in the sense these words convey to the popular mind or as defined in the dictionary. This fact may have been one factor which prompted the elimination of private non-agricultural lands from the range of the

prohibition, along with reasons of foreign policy, economics and politics.

From the opinion of Secretary of Justice Jose A. Santos in 1939, the majority can not derive any comfort unless we cling to the specious argument that as public lands go so go private lands. In that opinion the question propounded was whether a piece of public land which was more profitable as a homesite might not be sold and considered as agricultural. The illustrious Secretary answered yes, which was correct. But the classification of private lands was not directly or indirectly involved. It is the opinion of the present Secretary of Justice that is to the point. If the construction placed by the law-officer of the government on a constitutional provision may properly be invoked, as the majority say but which I doubt, as representing the true intent of the instrument, this Court, if it is to be consistent, should adopt Secretary Ozaeta's view. If the Solicitor General's attitude as interested counsel for the government in a judicial action is—as the decision also suggests but which, I think, is still more incorrect both in theory and in practice—then this Court should have given heed to the motion for withdrawal of the present appeal, which had been concurred in by the Solicitor General in line presumably with the opinion of the head of his department.

The Court fears that "this constitutional purpose of conserving agricultural resources in the hands of Filipino citizens may easily be defeated by the Filipino citizens themselves who may alienate their agricultural lands in favor of aliens." It reasons that "it would certainly be futile to prohibit the alienation of public agricultural lands to aliens if, after all, they may be freely so alienated upon their becoming private agricultural lands in the hands of Filipino citizens." Sections 122 and 123 of Act No. 141 should banish this fear. These sections, quoted and relied upon in the majority opinion, prevent private lands that have been acquired under any of the public land laws from falling into alien possession in fee simple. Without this law, the fear would be well-founded if we adopt the majority's theory, which we precisely reject, that agricultural and residential lands are synonymous, be they public or private. The fear would not materialize under our theory, that only lands which are not agricultural may be owned by persons other than Filipino citizens.

Act No. 141, by the way, supplies the best argument against the majority's interpretation of section 5 of Article XIII. Prohibiting the acquisition by foreigners of any lands originally acquired in any manner under its provisions or under the provisions of any previous law, ordinance, royal order, royal decree, or any other law formerly enforced in the Philippines with regard to public lands, etc., it is a mute and eloquent testimony that in the minds of the legislature, whose interpretation the majority correctly say should be looked to as authoritative, the Constitution did not carry such prohibition. For if the Constitution already barred the alienation of lands of any kind in favor of aliens, the provisions of sections 122 and 123 of Commonwealth Act No. 141 would have been superfluous.

The decision says that "if under Article XIV section 8, of the Constitution, an alien may not even operate a small jeepney for hire, it is certainly not hard to understand that neither is he allowed to own a piece of land." There is no similitude between owning a lot for a home or a factory or a store and operating a jeepney for hire. It is not the ownership of a jeepney that is forbidden; it is the use of it for public service that is not allowed. A foreigner is not barred from owning the costliest motor cars, steamships or airplanes in any number, for his private use or that of his friends and relatives. He can not use a jeepney for hire because the operation of public utilities is reserved to Filipino nationals, and the operation of a jeepney happens to be within this policy. The use of a jeepney for hire may be insignificant in itself but it falls within a class of industry that performs a vital function in the country's economic life, closely associated with its advancing civilization, supplying needs so fundamental for communal living and for the development of the country's economy, that the government finds need of subjecting them to some measure of control and the Constitution deems it necessary to limit their operation by Filipino citizens. The importance of using a jeepney for hire cannot be sneered at or minimized just as a vote for public office by a

single foreign citizen can not be looked at with a shrug of the shoulder on the theory that it would not cause a ripple in the political complexion or scene of the nation.

This Court quotes with approval from the Solicitor General's brief this passage: "If the term 'private agri cultural lands' is to be construed as not including residential lots or lands of similar nature, the result will be that aliens may freely acquire and possess not only residential lots and houses for themselves but entire subdivisions and whole towns and cities, and that they may validly buy and hold in their names lands of any area for building homes, factories, industrial plants, fisheries, hatcheries, schools, health and vacation resorts, markets, golf-courses, playgrounds, airfields and a host of other uses and purposes that are not, in appellant's words, strictly agricultural." Arguments like this have no place where there is no ambiguity in the constitution or law. The courts are not at liberty to disregard a provision that is clear and certain simply because its enforcement would work inconvenience or hardship or lead to what they believe pernicious results. Courts have nothing to do with inconvenience or consequences. This role is founded on sound principles of constitutional government and is so well known as to make citations of authorities presumptuous.

Granting the possibility or probability of the consequences which this Court and the Solicitor General dread, we should not overlook the fact that there is the Congress standing guard to curtail or stop such excesses or abuses if and when the menace should show its head. The fact that the Constitution has not prohibited, as we contend, the transfer of private non-agricultural lands to aliens does not prevent the Congress from passing legislation to regulate or prohibit such transfer, to define the size of private lands a foreigner may possess in fee simple, or to specify the uses for which lands may be dedicated, in order to prevent aliens from conducting fisheries, hatcheries, vacation resorts, markets, golf-courses, cemeteries. The Congress could, if it wants, go so far as to exclude foreigners from entering the country or settling here. If I may be permitted to guess, the alteration in the original draft of section 5 of Article XIII may have been prompted precisely by the thought that it is the better policy to leave to the political departments of the Government the regulation or absolute prohibition of all land ownership by foreigners, as the changed, changing and ever-changing conditions demand. The Commonwealth Legislature did that with respect to lands that were originally public lands, through Commonwealth Act No. 141, and the Legislative Assembly during the Japanese occupation extended the prohibition to all private lands, as Mr. Justice Paras has pointed out. In the present Congress, at least two bills have been introduced proposing Congressional legislation in the same direction. All of which is an infallible sign that the Constitution does not carry such prohibition, in the opinion of three legislatures, an opinion which, we entirely agree with the majority, should be given serious consideration by the courts (if indeed there were any doubt), both as a matter of policy, and also because it may be presumed to represent the true intent of the instrument. (12 C. J., 714.) In truth, the decision lays special emphasis on the fact that "many members of the National Assembly who approved the new Act (No. 141) had been members of the Constitutional Convention." May I add that Senator Francisco, who is the author of one of the bills I have referred to, in the Senate, was a leading, active and influential member of the Constitutional Convention?

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