

THE COLLECTOR OF CUSTOMS AIRPORT CUSTOMHOUSE, PASAY CITY, PETITIONER, VS. HON. ONOFRE A. VILLALUZ, AS JUDGE OF THE CIRCUIT CRIMINAL COURT, 7TH JUDICIAL DISTRICT, STATIONED AT PA...*G.R. No. L-34038. June 18, 1976*

Ponente: MAKASIAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a115be839260/>**MAKASIAR, J.:**

On July 1, 1971, petitioner Collector of Customs, Salvador T. Mascardo, filed against Cesar T. Makapugay, a letter complaint with respondent Judge of the Circuit Criminal Court for violation of: (a) Section 174 of the National Internal Revenue Code, as amended by Republic Act No. 4713, (b) Central Bank Circular No. 265, in relation to Section 34 of Republic Act No. 265, otherwise known as The Central Bank Act, and (c) Sections 3601 and 3602 of Republic Act No. 1937, in relation to Sections 2505 and 2530 (m) 1 of the same Act, claiming that Cesar T. Makapugay "with malicious intention to defraud the government criminally, willfully and feloniously brought into the country FORTY (40) cartons of 'untaxed blue seal' Salem cigarettes and FIVE (5) bottles of Johnny Walker Scotch Whiskey, also 'untaxed', without the necessary permit from the proper authorities. The respondent submitted a Baggage Declaration Entry which did not declare the said articles. The Customs Examiner assigned further asked him if he has something more to declare but the answer was in the negative. And in utter disregard of existing Central Bank Circulars, particularly C.B. Circular 265, as amended, the respondent brought into the country various Philippine Money in the amount of Two Thousand Two Hundred Eighty (P2,280.00) Pesos cleverly hidden in one of the pieces of baggage examined by the assigned customs examiner, without prior permit from the Central Bank authorities. * * *" (p. 11, rec.).

Respondent Judge assumed jurisdiction to conduct and did conduct the preliminary investigation, and on July 6, 1971, issued the challenged order, dismissing "the case with prejudice and ordering the return to private respondent the amount of P2,280.00 his passport No. Ag-2456 FA - No. B103813, and one (1) box of airconditioning evaporator only, as well as the forfeiture of forty (40) cartons of untaxed blue seal Salem cigarettes and five (5) bottles of Johnny Walker Scotch Whiskey" (p. 13, rec.).

Armed with said order, private respondent Makapugay demanded that petitioner release the articles so stated. Petitioner Collector of Customs refused to obey the order due to the "prior institution of seizure proceedings there-on." The refusal prompted respondent Makapugay to file a complaint for "Open Disobedience" under Article 231 of the Revised Penal Code, before the City Fiscal of Pasay City.

Hence, this petition for certiorari with preliminary injunction, seeking to annul and set aside the order dated July 6, 1971 on the ground that respondent Judge has no power to conduct a preliminary investigation of criminal complaints directly filed with him, cannot legally order the dismissal "with prejudice" of a criminal case after conducting a preliminary investigation thereon, and is without authority to order the return of articles subject of seizure proceedings before Customs authorities.

In due time, respondents filed their respective answers to the petition and subsequently both parties submitted their respective memoranda in lieu of oral argument.

G. R. No. L-34243

On June 22, 1971, respondent Collector of Customs filed a letter-complaint with respondent Judge against petitioner Nicanor Marcelo for an alleged violation of Section 3602 in relation to Section 2505 of Republic Act 1937, otherwise known as the Tariff and Customs Code, supposed to have been committed in the following manner:

"* * * Mr. Marcelo who is an arriving passenger from Hongkong on board a Philippine Air Lines plane, Flight 307, on June 22, 1971, criminally, feloniously, and with intention to defraud the government did not declare the contents of his pieces of baggage in the Baggage Declaration Entry nor with the assigned Customs Examiner. * * * When his pieces of baggage were examined, instead of personal effects as declared in the Baggage Declaration Entry, what were found were various assorted Watches, Bags, Montagut shirts and Dress materials which are highly taxable.

"The act of passenger Marcelo in intentionally refusing to declare the said articles in the Baggage Declaration Entry, and before the Customs Examiner despite inquiries made, constitute a criminal offense within the meaning of Section 3602 of the Tariff and Customs Code of the Philippines. * * * (p. 19, rec.).

The criminal complaint having been docketed as Case No. CCC-VII-854-P.C., the respondent Judge assumed jurisdiction over the objection of petitioner's counsel, conducted the preliminary examination and investigation, simultaneously in the manner provided for by Section 13, Rule 112 of the New Rules of Court, and thereafter on October 6, 1971 issued the following order:

"WHEREFORE, there being a preliminary investigation and examination conducted by the Court and considering that the respondent was given a chance to defend himself let a Warrant of Arrest be issued for his apprehension. The respondent is hereby ordered to post a bond in the amount of P5,000.00 for his provisional release.

"Pursuant to Section 6, Rule 135 of the New Rules of court, in relation to Section 13, Rule 113 thereto, the City Fiscal of Pasay is hereby ordered to file the corresponding information against the respondent before this court of competent jurisdiction within FORTY EIGHT (48) HOURS from receipt hereof" (p. 23, rec.).

Petitioner Nicanor Marcelo filed this action for certiorari with preliminary injunction, impugning the validity of the order of respondent Judge dated October 6, 1971, on the same ground as the petition in G.R. No. L-34038.

On October 20, 1971, the Supreme Court adopted a resolution requiring respondents to file an answer and likewise issued a writ of preliminary injunction, "restraining respondent Judge, his representatives, assigns or persons acting upon his orders, place or stead, from executing, enforcing and implementing his order of October 6, 1971 * * *" (p. 32, rec.).

In compliance therewith, respondent Judge filed a petition for admission of answer on November 29, 1971 (pp. 43-44, rec.), which was granted by this Court in its December 13, 1971 resolution (p. 62, rec.).

On the other hand, respondent Collector of Customs, through the Solicitor General, filed a manifestation on February 1, 1972, adopting as his answer to the petition, the legal grounds averred in the original petition in G.R. No. L-34038, Collector of Customs, etc. versus Hon. Onofre A. Villaluz, etc., et al. (p. 72, rec.).

On June 13, 1972, the Supreme Court by resolution resolved to consider the case submitted for decision after noting the failure of petitioner to file his memorandum (p. 94, rec.).

G. R. No. L-36376

On February 22, 1973, private respondents Gregorio Conde and Anastacia Torillo, filed a complaint directly with the Circuit Criminal Court, indicting petitioners with violations of the Anti-Graft Law.

The complaint was ultimately docketed and on the same day (February 22, 1973), respondent Judge forthwith issued an order of the following tenor:

"Considering that the complaint filed * * * * sufficient in form and substance, the same having been filed in accordance with Section 13, Rule 112 of the New Rules of Court, and pursuant to the doctrine laid down by the Supreme Court in the case of "Mateo vs. Villaluz", let the preliminary investigation of this case be set on February 24, 1973 at 8:00 o'clock in the morning" (p. 22, rec.).

On the day set, petitioners appeared at the sala of respondent Judge who proceeded to conduct a preliminary investigation of the case. The same was reset on February 26, 1973.

Immediately before the hearing of February 26, 1973, petitioners, through counsel, filed an "Urgent Motion to Suspend Preliminary Investigation" contesting the power of the respondent Judge to conduct the preliminary examination and investigation (p. 23, rec.), which was denied by respondent Judge in his order dated February 27, 1973 (p. 31, rec.). Counsel for petitioners then asked for time to raise the issue before this Court, which respondent Judge granted by giving petitioners a period of just one (1) day to seek relief from this Tribunal.

Accordingly, herein petitioners filed this petition.

On March 2, 1973, this Court required respondents to answer the petition and issued a temporary restraining order "enjoining respondent Judge from * * * causing and effecting the arrest of petitioners herein" (p. 39, rec.).

In his answer filed on March 14, 1973, respondent Judge, invoking the same arguments in G.R. No. L-34243, held on to the view that the Circuit Criminal Courts are vested with the power and authority to conduct preliminary investigations. Private respondents conformed thereto.

G. R. No. L-38688

On May 23, 1974, private respondent Felix Halimao filed a criminal complaint directly with the Circuit Criminal Court presided over by respondent Judge charging herein petitioner with alleged violations of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, which complaint was docketed as Criminal Case No. Prel. Inv. - 116-Rizal.

At the hearing of May 27, 1974, petitioner, through counsel, filed an "Urgent Motion to Suspend Preliminary Investigation" (p. 9, rec.), based on the ground that respondent Judge has no authority to conduct the same.

After arguments by counsels, for both parties, the respondent Judge denied petitioner's motion. An oral motion for reconsideration was likewise denied (pp. 14-15, rec.).

Hence, this petition.

On May 31, 1974, this Court by resolution gave due course to the petition and issued a restraining order, "enjoining respondent Judge, his agents, representatives, and/or any person or persons acting upon his orders or in his place or stead from proceeding further with the preliminary investigation * * *" (p. 24, rec.).

On June 17, 1974, it appearing that the case involved in the petition is criminal in nature, the Court required herein petitioner to IMPLEAD the People of the Philippines as party-respondent (p. 26, rec.). In conformity thereto, petitioner through counsel, filed on June 28, 1974 an amended petition impleading The People (pp. 49-50,

rec.).

Except for the Solicitor General who appeared for The People of the Philippines, respondents in answer, frontally met the averments of petitioner.

G. R. No. L-39525

On October 24, 1974, petitioner filed this instant petition seeking to annul "any preliminary investigation conducted by respondent Judge in Preliminary Inv. No. 72-Rizal, Circuit Criminal Court, 7th Judicial District, as well as the warrant, if any, that may be issued for the arrest and imprisonment of petitioner" and to enjoin permanently respondent Judge from conducting preliminary investigations and from ordering petitioner's arrest.

On October 30, 1974, the Court required the respondents to file their answer within ten (10) days from notice thereof and issued, effective immediately, a temporary restraining order against respondent Judge (p. 64, rec.).

On November 13, 1974, the Solicitor General filed a manifestation requesting to be excused from filing an answer considering that in three other cases (*The Collector of Customs v. Hon. Onofre A. Villaluz*, G.R. No. L-34038; *Nicanor Marcelo v. Hon. Onofre A. Villaluz*, G.R. No. L-34243; and *Francisco Felix v. Hon. Onofre A. Villaluz*, G.R. No. L-38688) which involve the same legal issue, his office maintains that respondent Judge has no authority to conduct a preliminary investigation of criminal cases which he may try and decide under Republic Act No. 5179 (p. 81, rec.).

On November 20, 1974, private respondent filed his answer (pp. 87-104, rec.).

Petitioner, on January 22, 1975, filed a motion praying that the instant case be consolidated and decided jointly with G. R. Nos. L-34038, L-34243, L-36376 and L-38688 as they involve the same issue; and that the memoranda filed for petitioners in said four cases be reproduced and adopted as the memorandum for petitioner in this case, which should be deemed submitted for decision together with the aforementioned cases (pp. 122-124, rec.). Said motion was granted in the resolution of February 10, 1975 (p. 129, rec.).

In his pleading dated February 5, 1975, private respondent (pp. 130-132, rec.) stated that he joins the petitioner in his plea for the consolidation of the instant case with cases Nos. L-34038, L-36376 and L-38688 and prayed that the memorandum filed by respondent in L-38688 be considered reproduced and adopted as the memorandum for private respondent in this case, in addition to the affirmative defenses and arguments contained in private respondent's answer to the petition, and that this case be submitted for decision together with the aforementioned cases (p. 137, rec.).

The records disclosed the following antecedent facts.

On January 11, 1974, herein private respondent Jose Arellano filed a complaint against Pedro E. Nieva, Jr., herein petitioner, together with his wife Pacita and daughter Patricia N. Sacasas, with the Circuit Criminal Court, Seventh Judicial District, Pasig, Rizal, for violation of the Anti-Graft and Corrupt Practices Act (RA No. 3019) in connection with the P230,000.00 industrial loan obtained by the Areson Woodtech Manufacturing Company headed by the complainant, Jose Arellano, from the Development Bank of the Philippines, where herein petitioner holds the position of Auditor. The case was docketed therein as Criminal Case Prel. Inv. CCC-VII-72 Rizal (pp. 1-2, 90-91, pp. 14-16 [Annex "A"] rec.).

On the same day the aforesaid complaint was filed in court, respondent Judge issued an order that reads:

"Pursuant to Section 14, Rule 112 of the New Rules of Court in relation to the doctrine laid down by the Supreme Court in the case of '*Mateo versus Villaluz*', Assistant City Fiscal Teodoro B. Santos is hereby ordered to conduct the preliminary investigation of the above-entitled case within five (5) days from receipt

hereof and to file the necessary information in a court of competent jurisdiction if the evidence so warrants.

"* * * * " (pp. 2, 91 [Annex "B"], pp. 21-22, rec.).

On May 22, 1974, investigating Fiscal Teodoro B. Santos endorsed the records of the case back to respondent Judge, because

"... (T)he facts and circumstances which has (sic) been the basis of this instant suit is the same set of facts and circumstances and involving the same parties in a case of ESTAFA THRU FALSIFICATION now pending preliminary investigation and also before this Honorable Court. Hence, this endorsement in order to avoid duplication of effort and time in the resolution and disposition of the same incident."

In an urgent ex-parte motion dated May 24, 1974 filed with the Circuit Criminal Court pursuant to paragraph 1 of the Joint Circular of the Department of Justice and the Department of National Defense dated April 29, 1974, herein private respondent prayed that the endorsement of Fiscal Santos be given due course and that the preliminary investigation be conducted by the respondent Judge (pp. 3, 92, 104 [Annex "1"] rec.).

Herein petitioner opposed the same in a pleading dated June 1, 1974 (p. 3, pp. 40-49 [Annex "F"], rec.), which was amplified in another pleading dated September 24, 1974 (pp. 3, 50-59 [Annex "G"], rec.).

Under date of June 18, 1974, private respondent filed a motion to strike out herein petitioner's opposition to complainant's ex-parte urgent motion for preliminary investigation in view of the failure of herein petitioner's counsel to comply with the order of the Court to furnish a copy of his opposition to complainant Jose Arellano (pp. 93, 105-106 [Annex "2"], rec.).

On September 24, 1974, herein petitioner filed his opposition to the motion to strike out herein respondent's opposition (pp. 7, 55-59 [Annex "G"], rec.). On the same day, a hearing was conducted by the respondent Judge on the urgent motion for preliminary investigation and immediately thereafter, he denied said opposition of herein petitioner (Annex "H", p. 62, pp. 3, 93, rec.).

Hence, this petition.

G. R. No. L-40031

On November 2, 1973, Jose Arellano, private respondent herein, filed with the Circuit Criminal Court at Pasig, Rizal, a complaint charging herein petitioner with estafa, allegedly committed under the circumstances provided for in paragraph 4 1(b), Article 315 of the Revised Penal Code (p. 12, rec.). Said complaint was subsequently docketed as CCC Case No. Prel. Inv.-65-Rizal. Thereupon, respondent Judge proceeded to conduct the preliminary investigation in question. After the termination of the proceedings, respondent Judge issued on May 31, 1974 the challenged resolution which reads:

"Wherefore, pursuant to Section 13, Rule 113 of the New Rules of Court, Assistant City Fiscal Teodoro B. Santos is hereby ordered to file the necessary information for the crime of Estafa against respondent Pacita Nieva, in a court of competent jurisdiction, within forty-eight (48) hours from receipt hereof.

"Let a warrant of arrest be issued for the immediate apprehension of respondent Mrs. Pacita Nieva, and for her provisional liberty, she is hereby ordered to post a bond in the amount of P20,000.00" (p. 24, rec.).

On July 26, 1974, petitioner's counsel filed an urgent motion to declare the preliminary investigation proceedings null and void ab initio due to lack of jurisdiction on the part of the court to conduct the same, re-echoing the arguments invoked by petitioners in G.R. Nos. L-34038, L-34243, L-36376 and L-38688 (p. 14, rec.).

In an order dated August 8, 1974, respondent Judge denied the same (p. 22, rec.).

On January 28, 1975, this Court by resolution required respondents to file an answer to the petition and not to move for the dismissal of the same. The Court further resolved to consolidate the case with Cases Nos. L-38688, L-34038, L-34243, and L-36376 (p. 26, rec.).

In a manifestation filed on February 10, 1975, the Solicitor General requested that he be excused from filing an answer on the ground that in three cases (G.R. Nos. L-34038, L-34243 and L-38688), which involve the same legal issue, the counsel for the People has taken the position that respondent Judge has no authority or jurisdiction to conduct a preliminary investigation of criminal cases which he may try and decide under Republic Act No. 5179.

Private respondent, on the other hand, through the Citizens Legal Assistance Office of the Department of Justice, filed his answer on February 20, 1975, maintaining that respondent Judge has jurisdiction to conduct preliminary investigation, invoking particularly Section 13, Rule 112 of the Revised Rules of Court in relation to Sections 1, 3 and 6 of Republic Act No. 5179.

I

The one common legal issue posed by these six cases is whether a Circuit Criminal Court possesses the power to conduct preliminary investigations.

Neither the explanatory note to House Bill No. 9801 (now R.A. No. 5179) nor the available Congressional debates intimate that Circuit Criminal Courts are clothed with the authority to conduct preliminary examinations and investigations (Congressional Records of House, March 28, 1967, pp. 41-45; May 15, 1967).

WE therefore examine the law.

Petitioners, in maintaining that respondent Judge has no such power, rest their claim on Section 1 of Republic Act No. 5179, which provides:

"In each of the sixteen judicial districts for the Court of First Instance as presently constituted, there is hereby created a Circuit Criminal Court with limited jurisdiction, concurrent with the regular Court of First Instance, to try and decide the following criminal cases falling under the original and exclusive jurisdiction of the latter:

"a. Crimes committed by public officers, crimes against persons and crimes against property as defined and penalized under the Revised Penal Code, whether simple or complex with other crimes;

"b. Violations of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, ***;

"c. Violations of Sections 3601, 3602 and 3604 of the Tariff and Customs Code and Sections 174, 175 and 345 of the National Internal Revenue Code" (italics supplied).

Petitioners argue that said courts, having been conferred limited jurisdiction, cannot exercise such power of preliminary investigation, the same not being embraced and contemplated within its given function to "try and decide" specific criminal cases.

What is limited by Republic Act No. 5179 is the scope of the cases that may be tried by Circuit Criminal Courts.

Circuit Criminal Courts are of limited jurisdiction, only because they cannot try and decide all criminal cases falling under the jurisdiction of the Courts of First Instance as courts of general jurisdiction. They can only take cognizance of cases expressly specified in Section 1 of Republic Act No. 5179, as amended by Presidential Decree No. 126. Nevertheless, they have the same powers and functions as those conferred upon regular Courts of First Instance necessary to effectively exercise such special and limited jurisdiction. This is plain and evident from Sections 3 and 6 of their organic law, Republic Act No. 5179:

"SECTION 3. The provisions of all laws and the Rules of Court relative to the judges of the Courts of First Instance and the trial, and disposition and appeal of criminal cases therein shall be applicable to the circuit judge and the cases cognizable by them insofar as they are not inconsistent with the provisions of this Act.

* * * * *

"SECTION 6. * * * Unless inconsistent with the provisions of this Act, the Circuit Criminal Courts shall have the same powers as those conferred by the Judiciary Act and the Rules of Court upon regular Courts of First Instance, insofar as may be necessary to carry their jurisdiction into effect."

Judges of the regular Courts of First Instance are expressly conferred the authority to conduct preliminary examination and investigation by Sections 13 and 14 of Rule 112 of the Revised Rules of Court:

"SECTION 13. Preliminary examination and investigation by the judge of the Court of First Instance. - Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the justice of the peace referred to in the second paragraph of Section 2, hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information" (*italics supplied*).

"SECTION 14. Preliminary examination and investigation by provincial or city fiscal or by state attorney in cases cognizable by the Court of First Instance. - Except where an investigation has been conducted by a judge of first instance, justice of the peace or other officer in accordance with the provisions of the preceding sections, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal, or state attorney, without first giving the accused a chance to be heard in a preliminary investigation conducted by him or by his assistant by issuing a corresponding subpoena. * * *"

The power of preliminary examination and investigation, which may be exercised by judges of the Circuit Criminal Courts, is without doubt, "not inconsistent with the provisions of Republic Act No. 5179," and likewise, "necessary to carry their jurisdiction into effect."

Moreover, Congress further confirmed that the Court of First Instance has the power to conduct preliminary investigation by approving on September 8, 1967 Republic Act No. 5180, prescribing a uniform system of preliminary investigation by all government prosecutors, which provides:

"SECTION. 1. Notwithstanding any provision of law to the contrary and except when an investigation has been conducted by a Judge of First Instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or any of his assistants, or by a state attorney or his assistants, without first giving the accused a chance to be heard in a preliminary investigation conducted by him by issuing a corresponding subpoena. * * *

"SECTION. 2. The provisions of Section fifteen, Rule 112, of the New Rules of Court of the Philippines, shall be observed in the investigations of persons in custody."

From the above-quoted provisions, Republic Act No. 5180 likewise continues the procedure prescribed in the Revised Rules of Court of 1964, particularly Rule 112 thereof.

The aforequoted portion of Section 1 of Republic Act No. 5180 was not modified by the amendatory Presidential Decrees Nos. 77 and 911 issued respectively on December 6, 1972 and March 23, 1976.

More decisively, the 1935 as well as 1973 Constitutions vests this essential power in all courts to first determine

probable cause before ordering the arrest of those charged with a criminal offense (Section 1[3] , Art. III, 1935 Constitution; Sec. 3, Art. IV, 1973 Constitution). The determination of "probable cause" is the sole object of preliminary examinations. Surely, Congress could not have possibly intended to deny the Circuit Criminal Courts such constitutional prerogative, which is part of the basic constitutional right of an individual whose person cannot be legally seized without prior preliminary examination by a judge.

WE enunciated that the creation of the Circuit Criminal Courts is for the purpose of alleviating the burden of the regular Courts of First Instance and to accelerate the disposition of criminal cases pending or to be filed therein (People vs. Gutierrez, etc., et al., 36 SCRA 172; Osmeña vs. Sec. of Justice, G.R. No. L-32033, Sept. 30, 1971, 199) or to contribute to the speedy resolution of criminal cases and help curb the progression of criminality in the country (Paraguya vs. Tiro, 41 SCRA 137). As opined by Mr. Justice Barredo in his concurring opinion in the Gutierrez case, supra, " * * * Circuit Criminal Courts are nothing but additional branches of the regular Courts of First Instance in their respective districts * * * ", which he reiterated in his concurring opinion in the Osmeña case, thus:

"My principal reason for my vote in favor of the judgment in this case is that I cannot find any justification for allowing the Secretary of Justice to have any part at all in the distribution or assignment of cases among the different branches of any Court of First Instance, of which the corresponding Circuit Criminal Court is one. I took this view in my concurring opinion in the case of People v. Gutierrez, cited in the main opinion of Justice Villamor, and I cannot see why I must opine differently now. * * * " (41 SCRA 211).

If the main purposes then in creating Circuit Criminal Courts are to alleviate the burden of the regular Courts of First Instance and to accelerate the disposition of the cases therein as well as stem the tide of criminality, it is only logical that such authority vested in the judges of the Courts of First Instance is likewise conferred on Circuit Criminal Courts. Otherwise, the Courts of First Instance would still be carrying the burden of conducting pre-liminary investigations in those cases where Circuit Criminal Courts have jurisdiction and consequently delaying the trial and disposition of criminal cases pending before such Courts of First Instance.

That Congress, in enacting Republic Act No. 5179 clearly intended, by Sections 3 and 6 thereof, to clothe the Circuit Criminal Court with all the powers vested in regular Courts of First Instance including the authority to conduct preliminary examinations and investigations, is confirmed by the Dangerous Drugs Act of 1972, otherwise known as Republic Act No. 6425, as amended by Presidential Decree No. 44, Section 39 of which confers on Circuit Criminal Courts, Courts of First Instance and Juvenile and Domestic Relations Courts concurrent original jurisdiction over all offenses punishable thereunder and expressly directs that the "preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of their filing." Before the amendment, the law required only seven (7) days from the date of the commencement of the preliminary investigation. Section 39, as amended, reads:

"Sec. 39. Jurisdiction. -- The Court of First Instance, Circuit Criminal Court, and Juvenile and Domestic Relations Court shall have concurrent original jurisdiction over all cases involving offenses punishable under this Act: Provided, that in cities or provinces where there are Juvenile and Domestic Relations Courts, the said courts shall take exclusive cognizance of cases where the offenders are under sixteen years of age.

"The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of their filing.

"Where the preliminary investigation is conducted by a prosecuting officer and a prima facie case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a prima facie case is found to exist, the corresponding information shall be filed by the proper prosecuting officer within

forty-eight (48) hours from the date of receipt of the records of the case.

"Trial of the cases under this section shall be finished by the court not later than ninety (90) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case."

It is patent that the aforequoted provision of Section 39 of Republic Act No. 6425 affirms the power of the Circuit Criminal Courts to conduct preliminary examination and investigation in all the cases falling under their jurisdiction and additionally fixes the period for preliminary investigation, the filing of the information and the rendition of decisions in all offenses penalized by the Dangerous Drugs Act of 1972.

Under the amendment, the Circuit Criminal Court no longer has exclusive, but still retains concurrent, jurisdiction with the Courts of First Instance and Juvenile and Domestic Relations Courts under the Dangerous Drugs Act. Its authority to conduct preliminary examination and investigation granted under Section 6 of Republic Act No. 5179, remains intact and undiminished; because the amendatory decree expressly directs that "If the preliminary investigation is conducted by a judge and a prima facie case is found to exist, the corresponding information should be filed by the proper prosecuting officer * * *." There is nothing in the amendatory decree from which it can be reasonably inferred that since the jurisdiction of the Circuit Criminal Court over violations of the Dangerous Drugs Act is no longer exclusive, Circuit Criminal Court Judges no longer possess the authority to conduct preliminary examination and investigation.

Recognizing the constitutional power of the courts, including the Courts of First Instance, to conduct preliminary examination, other special laws specifically vest such authority exclusively in the Court of First Instance in cases of violation of the Revised Election Code (Sec. 187, 1947 Revised Election Code, as amended; Sec. 234, 1971 Rev. Election Code) and of the Anti-Subversion Act when the penalty imposable for the offense is prision mayor to death (Sec. 16, Rep. Act No. 1700).

It is urged that the word "judge" in the above-quoted section of Presidential Decree No. 44 (and also in the 1935 and 1973 Constitutions) contemplates not the Court of First Instance Judge nor the Circuit Criminal Court Judge but the municipal judge. As heretofore stated, it is an elementary precept in statutory construction that where the law does not distinguish, WE should not distinguish (*Colgate Palmolive Philippines, Inc. vs. Gimenez*, L-14787, Jan. 28, 1961, 1 SCRA 267). The statute cannot give a restricted meaning to the generic term "judge" used in the constitutional guarantee against reasonable searches and seizures.

Furthermore, in *People versus Manantan* (L-14129, July 31, 1962, 5 SCRA 684), a justice of the peace, accused of violating Section 54 of the Revised Election Code, moved to dismiss the information on the ground that the law refers merely to a justice, judge, or fiscal and that being a justice of the peace, he is beyond the coverage of the said Code. The Supreme Court in denying such contention, held that there was no need of including justices of the peace in the enumeration in said section because the legislature had availed itself of the more generic term "judge". The term "judge", not modified by any word or phrase, is intended to comprehend all kinds of judges, including justices of the peace.

The cases of *People versus Paderna* (22 SCRA 273) and *Paraguya versus Tiro* (41 SCRA 13) involved not the power of the Circuit Criminal Court to conduct preliminary investigation, but its jurisdiction to try and decide certain cases. They do not at all reveal an iota of any further restriction on the limited jurisdiction of the Circuit Criminal Court other than those delineated in existing laws.

Thus, in the *Paderna* case, *supra*, involving a violation of Section 174 of the Tax Code, Mr. Chief Justice Castro, then Associate Justice, speaking for the Supreme Court in ruling that the Circuit Criminal Court was without jurisdiction to take cognizance of the case, stated:

"* * * [T]he charge is for unlawful possession of untaxed 'blue seal cigarettes' of an appraised value of less than P500.00 x x x and the penalty provided under Republic Act 4713 is a fine of not less than P50.00 nor more than P200.00 and imprisonment of not less than 5 nor more than 30 days because the value of the cigarettes does not exceed P500.00, this case falls within the original and exclusive jurisdiction of the city court * * *."

"* * * Section 1 of Republic Act 5179, which took effect on September 8, 1967, provides in part that circuit criminal courts shall have - limited jurisdiction concurrent with the regular court of first instance, to try and decide the following criminal cases falling under the original and exclusive jurisdiction of the latter.

"* * * * *

"The jurisdiction of the circuit criminal courts is thus dependent not only on the type of cases but also on the penalties provided for those cases. Inasmuch as the case at bar falls within the exclusive and original jurisdiction of the City Court, it cannot, even if it involves a violation of section 174 of the Tax Code, be taken cognizance of by circuit criminal courts, the jurisdiction of which is concurrent with that of courts of first instance where the latter's jurisdiction is original and exclusive."

The same ruling was substantially reiterated in the more recent Tiro case, *supra*, involving indirect bribery committed by a public officer. In passing upon the issue of the Circuit Criminal Court's limited jurisdiction, the Sup-reme Court, through Mr. Justice Jose B.L. Reyes, held:

"* * * The law (R.A. 5179) confined the jurisdiction of the circuit criminal courts (which is even made concurrent with the courts of first instance) to crimes committed by public officers; * * * only where they are falling within the original and exclusive jurisdiction of the court of first instance. In short, circuit criminal courts' jurisdiction was limited merely to cases involving crimes specifically enumerated in Section 1 of Republic Act 5179, for which the penalty prescribed by law is imprisonment for more than 3 years (or 6 years in proper cases), or fine of more than P3,000.00 (or P6,000.00 as the case may be), or both such fine and imprisonment (Sec. 44[f] in relation to Sec. 87 [c], Judiciary Act of 1948, as amended; *Esperat vs. Avila*, L-25922, June 30, 1967, 20 SCRA 596; *Mangila vs. Lantin*, L-24735, October 31, 1969, 30 SCRA 81; *People vs. Tapayan*, L-36885, November 28, 1969, 30 SCRA 529; *Andico vs. Roan*, L-26563, April 16, 1968, 23 SCRA 93).

"Since indirect bribery is penalized under the Revised Penal Code with imprisonment for a period not exceeding six months, suspension and public censure (Art. 211, RPC), the case is clearly removed from the competence of the circuit criminal court to pass upon. It is not denied that the crime of indirect bribery is essentially one committed by public officers. Jurisdiction of the court, however, is determined not only by nature of the offense charged in the information, but also by the penalty imposable thereto. * *" (italics supplied).

In these two cases, it was made clear that for the Circuit Criminal Court to acquire jurisdiction, the offense must not only be one of those enumerated under Section 1 of Republic Act No. 5179; it should also be within the original and exclusive jurisdiction of the regular Courts of First Instance. In the aforesaid cases, the Circuit Criminal Court was clearly without jurisdiction to hear and decide the offenses involved, by command of the specific provisions of its charter, the Judiciary Act and the Revised Penal Code; and not by a directive of the Supreme Court, which merely applied in said cited cases the statutory prescriptions. The Supreme Court cannot legally define additional restrictions, which is the sole prerogative of the law-making authority.

The contrary view appears to entertain the mistaken notion that Section 13, Rule 112 of the Revised Rules of Court, being a rule of procedure, the same should be rendered inoperative by reason of the fact that the Supreme Court cannot, by promulgating a rule of procedure, arrogate jurisdiction unto itself or grant any to the lower courts.

It is of course basic that only the Constitution and the law can confer jurisdiction to hear and decide certain cases. But equally true is the fact that both the 1935 and 1973 Constitutions expressly delegated to the Supreme Court the rule-making authority - the power to promulgate rules of pleading, practice and procedure and to amend the existing laws thereon. The law or rule on preliminary investigation is undoubtedly a rule of procedure.

The 1935 Constitution states:

"The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase or modify, substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines" (Sec. 13, Art. VIII, 1935 Constitution).

The 1973 Constitution similarly authorizes the Supreme Court to

"Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the National Assembly. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase or modify substantive rights" (Sec. 5[5] , Art. X, 1973 Constitution).

Sections 13 and 14 of Rule 112 of the Revised Rules of Court merely implement Section 3 of Article III of the 1935 Constitution (now Section 3 of Article IV of the 1973 Constitution). Section 13 of Rule 112 of the Revised Rules of Court was not an innovation as it merely restated Section 13 of General Order No. 58, Section 37 of Act No. 1627, and Sections 2 and 4 of Rule 108 of the 1940 Rules of Court, in obedience to its rule-making authority under Section 13, Article VIII of the 1935 Constitution. Rule 112 does not modify substantive rights but continues the procedure already operative prior to the 1935 Constitution.

WE have ruled that Rule 108 of the 1940 Rules of Court, which is the predecessor of Rule 112 of the 1964 Revised Rules of Court, is an adjective or procedural rule (*Bustos vs. Lucero*, 81 Phil. 640).

While admitting that Courts of First Instance were previously clothed with the power of preliminary investigation by virtue of Section 37 of Act 1627, nevertheless, it is argued that this same section was amended when the Judiciary Act of 1948 was enacted since under Section 99 of said Judiciary Act, "All laws and rules inconsistent with the provisions of this Act" were repealed. The inconsistency, it is claimed, lies in the fact that while the authority of municipal courts and city courts to conduct preliminary investigation was reiterated in said Judiciary Act, there was no mention therein whether Courts of First Instance Judges are still possessed of such authority.

If such repeal was intended, it is unconstitutional; because the Constitution of 1935 and 1973 vest in the judge the power to issue a warrant of arrest or search warrant after conducting a preliminary investigation or examination. Congress could not divest the court of such authority as the Constitution does not permit it, for the constitutional guarantee on arrest or search warrant is not qualified by some such phrase as "unless otherwise provided by law." For a clearer appreciation, the Constitutional guarantee on arrest and search warrant reads:

"(3) The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized" (Art. III, 1935 Constitution, italics supplied).

"Sec. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized" (Art. IV, 1973 Constitution, *italics supplied*).

It is clear from the aforequoted provisions of the 1973 Constitution that until now only the judge can determine the existence of probable cause and can issue the warrant of arrest. No law or presidential decree has been enacted or promulgated vesting the same authority in a particular "responsible officer." Hence, the 1973 Constitution, which was ratified and took effect on January 17, 1973, should govern the last four cases, namely, Nos. L-36376, L-38688, L-39525 and L-40031, which arose after January 17, 1973.

But even under the 1935 Constitution, the term seizures or seized comprehends arrest. Thus, in *Vivo versus Montesa* (July 29, 1968, 24 SCRA 155), reiterating the doctrines in the cases of *Qua Chee Gan, et al. vs. Deportation Board* (L-20280, Sept. 30, 1963) and *Morano vs. Vivo* (L-22196, June 30, 1967, 20 SCRA 462), WE ruled unanimously through Mr. Justice J.B.L. Reyes:

"Nevertheless, we are of the opinion that the issuance of warrants of arrest by the Commissioner of Immigration, solely for purposes of investigation and before a final order of deportation is issued, conflicts with paragraph 3, Section 1, of Article III (Bill of Rights) of our Constitution, providing:

'3. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.'

"It will be noted that the power to determine probable cause for warrants of arrest is limited by the Philippine Constitution to judges exclusively, unlike in previous organic laws and the Federal Constitution of the United States that left undetermined which public officials could determine the existence of probable cause. And in *Qua Chee Gan, et al. vs. Deportation Board*, L-20280, promulgated on September 30, 1963, this Court pointed out that Executive Order No. 69, of July 29, 1947, issued by President Roxas, in prescribing the procedure for deportation of aliens, only required the filing of a bond by an alien under investigation, but did not authorize his arrest.

"Discussing the implications of the provision of our Bill of Rights on the issuance of administrative warrants of arrest, this Court said in the same case:

'*** **'

'Under the express terms of our Constitution it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? Of course it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt.

'The (n) contention of the Solicitor General that the arrest of a foreigner is necessary to carry into effect the power to deportation is valid only when, as already stated, there is already an order of deportation. To carry out

the order of deportation, the President obviously has the power to order the arrest of the deportee. But, certainly, during the investigation, it is not indispensable that the alien be arrested. It is enough, as was true before the executive order of President Quirino, that a bond be required to insure the appearance of the alien during the investigation, as was authorized in the executive order of President Roxas.'

"Following the same trend of thought, this Court, in *Morano vs. Vivo* (L-22196, 30 June 1967, 20 SCRA 562; Phil. 1967-B, page 741), distinguished between administrative arrest in the execution of a final deportation order and arrest as preliminary to further administrative proceedings. The Court remarked in said case:

'Section 1 (3), Article III of the Constitution, we perceive, does not require judicial intervention in the execution of a final order of deportation issued in accordance with law. The constitutional limitation contemplates an order of arrest in the exercise of judicial power as a step preliminary or incidental to prosecution or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as a legal order of deportation, issued by the Commissioner of Immigration, in pursuance of a valid legislation'" (L-24576, pp. 161-162).

The foregoing doctrine was last reiterated in *Ang, et al. versus Galang, etc.* (L-21426, Oct. 22, 1975).

Under the American Constitution, the aforesaid terms include not only arrest but also invitations for police interview or interrogation as well as stop-and-frisk measures. In the 1968 case of *Terry versus Ohio*, the United States Supreme Court enunciated:

"* * * It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime 'arrests' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person (392 U.S. 1, 16 88 S.C.T. 1868, 20 LED. 2d 889; 903 [1968])."

That the aforesaid terms seizures and seized signify arrest was deliberately intended by the founding fathers of the 1935 Constitution, which words are likewise employed in the 1973 Constitution, Delegate Miguel Cuaderno categorically recounted:

"An amendment affecting the issuance of an order of arrest and search warrant, to the effect that in each case the order must be supported by the testimony of the complainant and the witnesses he may produce, made before the judge, and also an amendment providing that prisoners charged with capital offenses shall be bailable before conviction unless the evidence of guilt is strong, were approved upon the initiative of Delegate Francisco. It was the prevailing opinion among many delegates that some courts had been rather easy in the issuance of orders of arrest or search warrants, and quite strict in the matter of bail in cases where persons had been charged with capital offenses" (Cuaderno, *The Framing of the Philippine Constitution*, p. 65, italics supplied).

Delegate Jose Aruego added:

"During the debates on the draft, Delegate Francisco proposed an amendment which was adopted by the Convention, the amendment being the insertion of the words, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. The idea in the Francisco amendment was not new in the Philippines; for it was provided for in the Code of Criminal Procedure of the Philippines. The dignification of the idea into a constitutional provision was zealously insisted upon, in order to make the principle more sacred to the judges and to prosecuting officials. The amendment was intended to be a remedy for the evils pointed out in the debates, caused by the issuance of search warrants, many of which were in blank, upon mere affidavits on facts most of which were generally found afterwards to be false" (Aruego, *Framing of the Philippine Constitution*, Vol. I, p. 160).

The term "judge" employed in both Constitutions cannot be so limited to "municipal judge" as to exclude the

judges of the Court of First Instance and Circuit Criminal Court (*People vs. Manantan*, 5 SCRA 684, 690-695). WE are not justified to create a distinction where the Constitution does not make any.

In general, "judge" is a term employed to designate a public officer selected to preside and to administer the law in a court of justice (*Ark. - School Dist. No. 18 vs. Grubbs Special School Dist.*, 43 S.W. 2d 765, 766, 184 Ark. 863, 48 CJS 946).

According to intent or context, the term "judge" may include an assistant judge (*N.H. - City Bank vs. Young*, 43 N.H. 457); a county or court justice (*Mo. State vs. O'Gorman*, 75 Mo. 370); a justice of the peace (*N.Y. People vs. Mann* 97 N.Y. 530, 49 Am. R. 556).

The term "a judge", in Gen. St. C.47, Art. 1 & 22, providing that "a judge" may cause any house or building to be searched for the protection of gambling tables, etc., is equivalent to "any judge" and comprehends an entire class, and cannot, without disturbing its meaning, be restricted in its applications to judges of county, city and police courts and therefore the judge of the Louisville Law and equity court has authority to issue a warrant for such a search (*Com. vs. Watzel*, 2 S.W. 123, 125, 84 KY 537).

Admittedly, Section 99 of the Judiciary Act contains a repealing clause which provides: "All laws and rules inconsistent with the provisions of this Act are hereby repealed." The question may now be asked: What is the nature of this repealing clause? It is certainly not an express repealing clause because it fails to identify or designate the Act or Acts that are intended to be repealed (*Sutherland, Statutory Construction*, [1934], Vol. 1, p. 467). Rather, it is a clause which predicates the intended repeal upon the condition that a substantial and an irreconcilable conflict must be found in existing and prior Acts. Such being the case, the presumption against implied repeals and the rule against strict construction regarding implied repeals apply *ex proprio vigore*; for repeals and amendments by implication are not favored (*Jalandoni vs. Andaya*, L-23894, Jan. 24, 1974, 55 SCRA 261, 265-6; *Villegas vs. Subido*, L-31711, Sept. 30, 1971, 41 SCRA 190; *Quimseng vs. Lachica*, 2 SCRA 182). Indeed, the legislature is presumed to know the existing laws; so that, if a repeal is intended, the proper step is to so express it with specificity (*Continental Insurance Co. vs. Simpson*, 8 F [2d] 439; *Webb vs. Bailey*, 151 Ore. 2188, 51 P [2d] 832; *State vs. Jackson*, 120 W. Va. 521, 199 S.E. 876). The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law (*Crawford, Construction of Statute*, 1940 ed., p. 631), unless an irreconcilable inconsistency and repugnancy exist between the terms of the new and of the old statutes (*Iloilo Palay and Corn Planters Association, Inc. vs. Feliciano*, 13 SCRA 377). Here, there is no such inconsistency.

To begin with, the two laws, although with a common objective, refer to different persons and different methods applicable under different circumstances. Thus, while Section 87 of the Judiciary Act provides that municipal judges and judges of city courts may also conduct preliminary investigation for any offense alleged to have been committed within their respective municipalities and cities * * *; Section 37 of Act 1627 reads in part that such power of "every justice of the peace including the justice of Manila, * * * shall not exclude the proper judge of the Court of First Instance * * * from exercising such jurisdiction."

WE should not, and cannot, adopt the theory of implied repeal except upon a clear and unequivocal expression of the will of Congress, which is not manifest from the language of Section 99 of the Judiciary Act, apart from the fact that Congress by itself alone had no power to amend the Constitution.

The opposite view likewise denies that the jurisdiction of our courts to conduct preliminary investigation could be traced to the Constitution, adding that the Charter of Manila and other cities confer upon the respective fiscals of said cities the power to conduct preliminary investigations.

The organic acts prior to the 1935 Constitution did not prohibit the conferment of such a power to conduct preliminary examination or investigation on quasi-judicial officers like the city fiscals of chartered cities (see the instructions of President McKinley to First Philippine Commission, the Philippine Bill of 1902, Jones Law of 1916, and the Revised Administrative Code of 1917).

But the power thus granted to the Manila City Fiscals (and later to City Fiscals and City Attorneys of other chartered cities) to conduct preliminary investigations did not and does not include the authority to issue warrants of arrest and search warrants, which warrants the courts alone can issue then as now. The constitutional guarantee against unreasonable searches and seizures under the 1935 Constitution provides that only a judge can issue a search warrant or warrant of arrest after he has by himself personally determined the existence of probable cause upon his examination under oath of the complainant and his witnesses; although as ruled in one case, he may rely on the investigation conducted by the fiscal or prosecutor (*Amarga vs. Abbas*, 98 Phil. 739, 741-42).

It is patent that under the 1935 Constitution, only the "judge" is directed to conduct a preliminary examination for the issuance of the warrant of arrest by express constitutional conferment.

But the 1973 Constitution empowers the National Assembly to grant the power to issue search warrants or warrants of arrest after conducting the necessary preliminary examination to "other responsible officer." Until such a law is enacted by the National Assembly, only the judge can validly conduct a preliminary examination for the issuance of a warrant of arrest or search warrant.

Even when the fiscal or prosecutor conducts the preliminary investigation, only the judge can validly issue the warrant of arrest. This is confirmed by Section 6 of Rule 112 of the 1964 Revised Rules of Court, which directs the judge to issue the warrant of arrest when he is "satisfied from the preliminary examination conducted by him or by the investigating officer (referring to the fiscal or the municipal mayor under Sec. 5) that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, * * *."

Thus, the power of the city prosecutors to conduct preliminary examination and investigation (minus the authority to issue warrants of arrest or search warrant) is purely statutory. On the other hand, the judge derives his authority not only from the Rules of Court, but also - and originally - from the fundamental law to which all other laws are subordinate. If an objection must be raised, it should be against the authority of the fiscal to exercise such power of preliminary investigation, which, as has been stated, is merely statutory. No less than the Constitution confers upon the judge the power to conduct such examination and investigation.

The case of *Albano vs. Alvarez* (December 22, 1965, 15 SCRA 518) is authority for the proposition that Sec. 13 of Rule 112 of the 1964 Revised Rules of Court contains an innovation, which requires that, when the Court of First Instance itself conducts the preliminary investigation, it must not only conduct the preliminary examination proper but the preliminary investigation as well since Section 13 commands the Court of First Instance to conduct both the preliminary examination and investigation simultaneously (523-524). Said *Albano* case does not negate, but recognizes the authority of the judge of the Court of First Instance to conduct such preliminary investigation.

It is true that this COURT held expressly and impliedly that under the charters of the cities of Manila, Bacolod and Cebu, the power to conduct preliminary investigation is exclusively lodged in the city prosecutor (*Sayo vs. Chief of Police*, 80 Phil. 859, 868-869, May 12, 1948; *Espiritu vs. De la Rosa*, 45 OG 196; *Montelibano vs. Ferrer*, 97 Phil. 228, June 23, 1955; and *Balite vs. People*, 18 SCRA 280, 285-286, Sept. 30, 1966). But the charters of the cities of Manila, Bacolod and Cebu do not contain any provision making such grant of power to city prosecutors exclusive of the courts (*Kapunan*, Criminal Procedure, 3rd Edition, 1960), which cannot be deprived of such authority to conduct preliminary examination because said prerogative of the courts emanates

from the Constitution itself. Unless the Constitution is amended, the Judge cannot be divested of such a power, which is an essential element of the cardinal right of an individual against unreasonable searches and seizures. If the present city charters conferred on city fiscals or city prosecutors the power to issue warrants of arrest, it would be an unconstitutional grant of power under the 1935 Constitution. As heretofore intimated, the present practice or rule of court authorizing the judge to issue warrants of arrest based on the preliminary investigation conducted by the city fiscal, seems to violate the 1935 Constitution, which requires the judge himself to conduct the preliminary examination. Neither the judge nor the law can delegate such an authority to another public officer without trenching upon this constitutional guarantee against unreasonable searches and seizures.

The theory that Courts of First Instance and Circuit Criminal Courts Judges cannot exercise the power of preliminary examination and investigation, and that as a necessary consequence, they cannot also issue warrants of arrest, obviously collides with the 1935 and 1973 Constitutions.

Moreover, the theory tolerates an unthinkable - because anomalous - situation wherein the Court of First Instance and the Circuit Criminal Court must wait for prosecutors and courts inferior to them to conduct the preliminary examination and/or to issue the needed warrants of arrest before they could effectively exercise their power to try and decide the cases falling under their respective jurisdiction. This situation would make the Courts of First Instance and Circuit Criminal Courts totally dependent upon state prosecutors and municipal courts, which are inferior to them, for their proper functioning. The possibility that the administration of criminal justice might stand still will not be very remote.

The two-fold purpose for which the Circuit Criminal Courts were created was to alleviate the burden of the regular Courts of First Instance and accelerate the disposition of criminal cases filed therein (*Osmeña vs. Secretary of Justice*, supra; *People vs. Gutierrez*, supra). Such being the admitted purpose, the power to conduct preliminary examination must necessarily attach to the duties of a Circuit Criminal Court Judge; for aside from being one of the instruments by which a case may be accelerated and disposed of, it is a duty which truly lies within the scope of the office, essential to the accomplishment of the main purpose for which the office was created (Sec. 3, Art. III, 1935 Constitution; Sec. 3, Art. IV, 1973 Constitution), even if regarded as incidental and collateral, is germane to, and serves to promote the accomplishment of the principal purpose (*Lo Cham vs. Ocampo*, 77 Phil. 635).

WE RULE that both Section 1(3), Article III of the 1935 Constitution and Section 3, Article IV of the 1973 Constitution provide the source of the power of all Judges, including Judges of the Court of First Instance, the Circuit Criminal Courts, and other courts of equivalent rank, to conduct the examination to determine probable cause before the issuance of the warrant of arrest and therefore sustain the proceedings conducted by respondent Judge leading to the issuance of the warrants of arrest and his referral of the cases to the fiscal or other government prosecutor for the filing of the corresponding information.

II

It may be well to trace briefly the historical background of our law on criminal procedure.

During the Spanish regime, the rules on criminal procedure were found in the Provisional Law on Criminal Procedure which accompanied the Spanish Penal Code. These two laws were published in the Official Gazette in Manila on March 13 and 14, 1887 and became effective four (4) months thereafter (*U.S. vs. Tamparong*, 31 Phil. 32-33; *Francisco*, Criminal Procedure, 1969 ed., p. 8).

While the Provisional Law on Criminal Procedure provided for a preliminary summary oral trial by the justice of the peace or *gobernadorcillo*, it did not require any preliminary examination or investigation before trial. The

sumario was abolished by General Order No. 58 (U.W. vs. Tamparong, *supra*; Navarro, Criminal Procedure, 1960 ed., pp. 171, 174; Revilla, Vol. 2, Philippine Penal Code and Procedure, 1930 ed., pp. 1134-35).

When the Philippines came under American Sovereignty, General Order No. 58 was promulgated by the U.S. Military Governor in the exercise of his legislative powers as commander-in-chief of the occupation army and took effect on April 13, 1900. General Order No. 58 was amended by Act No. 194 of August 10, 1901, the Philippine Bill of 1902, Act No. 590 of January 9, 1903, Act No. 1627 of July 1, 1907, the Jones Law of 1916, Section 2474 of the Revised Administrative Code of 1917, Act No. 3042 of March 10, 1922, and Act No. 4178 of December 5, 1934.

General Order No. 58 amended (Sec. 1) the Criminal Code of Procedure enforced during the Spanish regime and vested in the magistrate "the authority to conduct preliminary investigation (Sec. 13) for the issuance of the warrant of arrest" and authorized "a judge or a justice of the peace" to issue a search warrant upon his determination of the existence of probable cause therefor "particularly describing the place to be searched and the person or thing to be seized" (Secs. 95 and 97). The term "magistrate" comprehended the Court of First Instance (Temporosa vs. Yatco, 79 Phil. 225, 226 [1947] ; Marcos vs. Cruz, 68 Phil. 96, 104-107 [1939] ; People vs. Red, 55 Phil. 706, 710 [1931] ; People vs. Solon, 47 Phil. 443, 441 [1925] ; Navarro, Criminal Procedure, 1960 ed., 1973; Padilla, Criminal Procedure, 1965 ed., p. 270).

"A 'magistrate' is an 'officer having power to issue a warrant for the arrest of a person charged with a public offense.' People vs. Swain, 90 P. 720, 722, 5 Cal. App. 421, citing Pen. Code, §807.

"A 'magistrate' is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime. The following persons are magistrates: (1) the justices of the Supreme Court; (2) the judges of the Circuit Court; (3) the county judges and justices of the peace; (4) all municipal officers authorized to exercise the powers and perform the duties of a justice of the peace. Wallowa County vs. Oakes, 78 P. 892, 46 Or. 33" (26 Words and Phrases, pp. 44, 45).

Act No. 194 of August 10, 1901 amended General Order No. 58 by empowering "every justice of the peace * * * to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law now vested in the judges of the Courts of First Instance" (*Italics supplied*).

The obvious inference from the aforequoted provision of Act No. 194 is that before its passage, the justice of the peace had no power to conduct preliminary investigation of any offense triable by the Court of First Instance, which alone can conduct such preliminary investigation of a crime under its original jurisdiction pursuant to General Order No. 58. But its enactment did not divest the Court of First Instance of such authority.

In the 1939 case of Marcos, et al. vs. Cruz, the Supreme Court, through Justice Imperial, sustained the power of the Court of First Instance to conduct preliminary investigations under Sections 13 and 14 of General Order No. 58 (68 Phil. 96, 106-107), which was impliedly followed in the 1947 case of Temporosa vs. Yatco, et al., *supra*.

While General Order No. 58 vested the authority in a magistrate, a generic term which includes judges of the Courts of First Instance and justices of the peace; Section 1 of Act No. 194 is less categorical by employing the clause "jurisdiction to hear and determine which is by law now vested in the judges of the Courts of First Instance."

The Philippine Bill of 1902 in a similar ambiguous vein contained such authority when it merely provided that the "Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said

Islands, subject to the power of said Government to change the practice and method of procedure. The municipal courts of said Islands shall possess and exercise jurisdiction as heretofore provided by the Philippine Commission, subject in all matters to such alteration and amendment as maybe here-after enacted by law; ****" (Sec. 9, italics supplied).

Act No. 590 of January 9, 1903 further amended Act No. 194 by extending the power to conduct preliminary investigation to the justice of the peace of the provincial capital or of the town wherein the provincial jail is situated of crimes committed anywhere within the province but again utilized and equivocal clause "jurisdiction to hear and determine which is by law now vested in the Courts of First Instance; * * *" (Sec. 7, Act 590, italics supplied).

Act No. 1627 of July 1, 1907 had the virtue of greater clarity when it authorized expressly every justice of the peace, including the justice of the peace of Manila, to "conduct preliminary investigation of all crimes and offenses alleged to have been committed within his municipality and cognizable by Courts of First Instance, but this shall not exclude the proper judge of the Court of First Instance or of a municipal court from exercising such jurisdiction. The justice of the peace of a capital or of a municipality in which the provincial jail is located, when directed by an order from the judge of First Instance, shall have jurisdiction to conduct investigation at the expense of the municipality wherein the crime or offense was committed, although alleged to have been committed anywhere within the province, to issue orders of arrest, * * *" (Sec. 37, Act No. 1627, italics supplied).

The Jones Law of 1916, like the Philippine Bill of 1902, merely provides "that the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law" (Sec. 26, Jones Law).

Section 2474 of the Revised Administrative Code of 1917 re-affirms the power of the Court of First Instance of Manila to conduct preliminary examination -

"Sec. 2474. Persons arrested to be promptly brought before a court - Preliminary examinations in municipal court and Court of First Instance. - Every person arrested shall, without unnecessary delay, be brought before the municipal court, or the Court of First Instance for preliminary hearing, release on bail, or trial. In cases triable in the municipal court the defendant shall not be entitled as of right to a preliminary examination, except a summary one to enable the court to fix the bail, in any case where the prosecution announces itself ready and is ready for trial within three days, not including Sundays, after the request for an examination is presented. In cases triable only in the Court of First Instance the defendant shall not be entitled as of right to a preliminary examination in any case where the fiscal of the city, after a due investigation of the facts, shall have presented an information against him in proper form. But the Court of First Instance may make such summary investigation into the case as it may deem necessary to enable it to fix the bail or to determine whether the offense is bailable." (Italics supplied).

It is clear that both the Manila Court of First Instance and municipal court can conduct a preliminary hearing or examination. Section 2474 aforequoted, adds, however, that the City Fiscal impliedly may conduct such preliminary examination; because it provides that in "cases triable only in the Court of First Instance the defendant shall not be entitled as of right to a preliminary examination in any case where the fiscal of the city, after a due investigation of the facts, shall have presented an information against him in proper form." It will be noted, however, that it is only after the City Fiscal has conducted a preliminary examination that the accused ceases to "be entitled as of right" to a preliminary examination by the Judge of the Court of First Instance who, however, retains inferentially the discretion to conduct another preliminary investigation because the Court of First Instance Judge is not foreclosed by the preliminary examination conducted by the City Fiscal. But, when the City Fiscal has not conducted any preliminary examination, the Court of First Instance Judge himself certainly

can proceed with such preliminary examination, which the defendant can demand as a matter of right.

Act No. 3042 of March 10, 1922, while amending Section 13 of General Order No. 58, re-states the power of the magistrate to conduct the preliminary examination for the issuance of the warrant of arrest.

Act No. 4178 of December 5, 1934 further amended Section 13 of General Order No. 58 but still retained the authority of the magistrate to conduct the preliminary examination. As heretofore stated, Sections 13 and 14 of General Order No. 58, as amended, were applied by the Supreme Court in *Marcos, et al. versus Cruz* (68 Phil. 96, 99, 106-107).

Under the jurisprudence then or prior to the 1935 Constitution, the preliminary investigation before the justice of the peace or municipal court consisted of two stages, namely, preliminary examination for the issuance of the warrant of arrest where only the complainant and his witnesses are heard by the justice of the peace; and the second stage where the accused and his witnesses are heard. The Judge of the Court of First Instance conducts only the first stage, that is, preliminary examination for purposes of the issuance of the warrant of arrest, to be followed by the actual trial (*Marcos vs. Cruz, supra*; *People vs. Moreno*, 77 Phil. 548, 555 [1946]).

The basic source of the power of the Courts of First Instance to conduct preliminary examination or investigation from May 14, 1935 to January 17, 1973, is paragraph 3 of Section 1 of Article III of the 1935 Constitution, which guarantees "the right of the people to be secure in their persons * * * against unreasonable * * * seizures * * * and no warrants shall issue but upon probable cause, to be determined by the judge after an examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing * * * the persons * * * to be seized." Construing the forgoing constitutional right against unreasonable searches and seizures, the Supreme Court, through then Chief Justice Ricardo Paras, pronounced that the determination of the existence of "probable cause must depend upon the judgment and discretion of the judge * * * issuing the warrant. * * *. His conclusion as to whether 'probable cause' existed or not is final and conclusive. If he is satisfied that 'probable cause' exists from the facts stated in the complaint, made upon the investigation by the prosecuting attorney, then his conclusion is sufficient upon which to issue a warrant of arrest. He may, however, if he is not satisfied, call such witnesses as he may deem necessary before issuing the warrant. * * *. There is no law which prohibits him from reaching the conclusion that 'probable cause' exists from the statement of the prosecuting attorney alone, or any other persons whose statement or affidavit is entitled to credit in the opinion of the judge * * *. The preliminary investigation conducted by the petitioner (Provincial Fiscal) under Republic Act No. 732 * * * does not, as correctly contended by the respondent Judge, dispense with the latter's duty to exercise his judicial power of determining, before issuing the corresponding warrant of arrest, whether or not probable cause exists therefor. The Constitution vests such power in the respondent judge who, however, may rely on the facts stated in the information filed after preliminary investigation by the prosecuting attorney" (*Amarga vs. Abbas*, March 28, 1956, 98 Phil. 739, 741-742).

While the power to conduct preliminary examination may be delegated by law to government prosecutors, only the judge can issue the warrant of arrest under the 1935 Constitution and prior thereto (*Sayo, et al. vs. Chief of Police, et al.* 80 Phil. 859; *Lino vs. Fugoso*, 77 Phil. 933; *Hashim vs. Boncan*, 71 Phil. 216). The valid seizure of a person can only be executed through a lawful warrant of arrest. Arrest without a warrant can only be legally effected by a police officer or private individual a) when the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence; b) when an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it; and c) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (Sec. 6, Rule 113, 1964 Revised Rules of Court).

In all other cases, there must be a valid warrant of arrest. When the seizure of a person is made without a warrant of arrest or with a warrant of arrest which is not based on a determination by the judge of the existence of probable cause, the arrest becomes unreasonable and therefore unconstitutional.

Sections 2 and 4 of Rule 108 of the 1940 Rules of Court expressly confer on the municipal or city judge, the City Fiscal and the Judge of the Court of First Instance the power to conduct preliminary examination or investigation.

On June 20, 1957, Republic Act No. 1700, otherwise known as the Anti-Subversion Law, was approved. The proviso of Section 5 thereof expressly provides that the preliminary investigation of offenses defined and penalized therein by prison mayor to death shall be conducted by the proper Court of First Instance. This grant obviously is exclusive of the provincial or city fiscal or other government prosecutors whose power to conduct preliminary investigation in all other cases is affirmed in the first clause of Section 5 thereof.

Sections 13 and 14 of the 1964 Revised Rules of Court re-state Sections 2 and 4 of Rule 108 of the 1940 Rules of Court.

As aforesaid, aside from the challenged Sections 3 and 6 of Republic Act No. 5179 creating the Circuit Criminal Courts, Republic Act 5180 was approved on September 8, 1967, which affirms the prerogative of the Courts of First Instance to conduct preliminary investigation of offenses punishable by said courts.

Presidential Decrees Nos. 77 and 911 promulgated respectively on December 6, 1972 and March 23, 1976, amending Republic Act No. 5180, did not modify the opening clause of Section 1 of said Republic Act 5180 affirming the power of the Court of First Instance to conduct preliminary investigation in accordance with law and the Rules of Court.

Section 234 of the 1971 Revised Election Code, otherwise known as Republic Act No. 6388, vests in the Court of First Instance "exclusive original jurisdiction to make preliminary investigations, issue warrants of arrest and try and decide any criminal case or proceeding for violation of" the Election Law. This provision was a reiteration of the previous election laws (Act No. 1582 of 1907; Com. Act No. 357 of 1938; and Republic Act No. 180 of 1947, as amended).

After the ratification of the 1973 Constitution on January 17, 1973, the source of the authority of the judge to conduct preliminary examination for purposes of issuing a warrant of arrest, is still the Constitution, this time the 1973 Constitution, which likewise guarantees "the right of the people to be secure in their persons * * * against unreasonable * * * seizures for whatever nature and for any purpose * * * and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing * * * the persons * * * to be seized" (Sec. 3 of Art. IV, 1973 Constitution). The 1973 Constitution, instead of employing the generic term warrants to comprehend both search warrants and warrants of arrest, as did the 1935 Constitution, expressly specifies "search warrants or warrants of arrest." The purpose of such specification was apparently to clarify the doubt raised by the dissenting opinion of Mr. Justice Montemayor in the Amarga case, supra, that the 1935 Constitution merely guarantees against unreasonable searches but not against unreasonable arrests, despite the fact that the constitutional guarantee expressly affirms "the right of the people to be secure in their persons * * * against unreasonable * * * seizures * * * and no warrant shall issue but upon probable cause, to be determined by the judge * * * particularly describing * * * the persons * * * to be seized" (Par. 3, Sec. 1, Art. III, 1935 Constitution).

In passing, the dissent of Justice Montemayor in the Amarga case seems to deny equal, if not greater, importance to individual freedom from illegal arrest or arbitrary detention vis-a-vis property rights and right against

self-incrimination. It will also likewise be noted that the 1973 Constitution also authorizes the law-making authority to empower other responsible officers to conduct such preliminary examination for purposes of the issuance of a warrant of arrest. As enunciated in the *Amarga* case and in *U.S. versus Ocampo* (18 Phil. 1, 41-42), the government prosecutors may be authorized to conduct such preliminary examination and their determination of the existence of probable cause may be relied upon by the judge, who may, as a consequence, issue the warrant of arrest; although the judge himself is not precluded from conducting his own preliminary examination despite the conclusion of the prosecuting attorney as to the existence or non-existence of probable cause.

III

1. The challenged order of July 6, 1971 issued by the respondent Judge in G.R. No. L-34038 (*Collector of Customs, etc. vs. Hon. Onofre Villaluz, et al.*) dismissed the criminal complaint filed by petitioners therein against private respondent with prejudice, obviously meaning that the case may not be re-filed without exposing the accused to double jeopardy. The respondent Judge seriously erred in so issuing said order, contravening as it does a basic legal principle on double jeopardy, and committing thereby a grave abuse of discretion. The constitutional right against double jeopardy exists, not after the first preliminary examination of investigation, but only after the first trial which results either in conviction or acquittal or in the dismissal or termination of the case without the express consent of the accused by a court of competent jurisdiction upon a valid complaint or information and after the accused had pleaded to the charge (Sec. 9, Rule 117, Revised Rules of Court; *Taladua vs. Ochotorena, et al.*, L-25595, February 15, 1974; *Republic vs. Agoncillo*, L-27257, August 31, 1971; 40 SCRA 579; *People vs. Obsania*, L-24447, June 29, 1968, 23 SCRA 1249; *People vs. Ylagan*, 58 Phil. 851).

As correctly stated by the Solicitor General, petitioner's counsel, "dismissal at preliminary investigation is never with prejudice. Re-filing of the same is allowed if evidence has become sufficient to warrant conviction of private respondent." There has been no deviation from such established jurisprudence exemplified in *People vs. Bagsican* (6 SCRA 400), wherein the Court held that "the finding in the preliminary investigation that no prima facie case existed against the accused does not bar subsequent prosecution and conviction. - Such finding is not final acquittal as would preclude further proceedings" (*italics supplied*).

2. Aggravating his grave mistake and misapprehension of the law, respondent Judge also directed through the same order the return of the articles allegedly seized from the person of respondent Makapugay. This portion of the questioned order is fraught with undesirable consequences.

As stated heretofore, the dismissal of a case, even with prejudice, during the stage of preliminary investigation does not bar subsequent prosecution and conviction if the evidence warrants the re-filing of the same. But with the challenged order commanding the return of the articles subject matter of the complaint, the re-filing of the same becomes next to impossible. For the enforcement of such order would virtually deprive herein petitioner Collector of Customs of the evidence indispensable to a successful prosecution of the case against the private respondent. Worse, the order nullified the power of seizure of the customs official.

Respondent Judge ignored the established principle that from the moment imported goods are actually in the possession or control of the Customs authorities, even if no warrant of seizure had previously been issued by the Collector of Customs in connection with seizure and forfeiture proceedings, the Bureau of Customs acquires exclusive jurisdiction over such imported goods for the purpose of enforcing the Customs laws, subject to an appeal only to the Court of Tax Appeals and to final review by the Supreme Court (Sections 2205 and 2303, Tariff and Customs Code; *Papa, et al. vs. Mago, et al.*, Feb. 28, 1968, 22 SCRA 857; *Virata, et al. vs. Aquino, et al.*, Sept. 30, 1973, 53 SCRA, 24; see also *Vierneza vs. Commissioner*, July 30, 1968, 24 SCRA 394; *Farm Implement & Machinery vs. Commissioner*, August 30, 1968, 24 SCRA 905; *Lazatin vs. Commissioner, et al.*,

July 30, 1969, 28 SCRA 1016; Asaali, et al. vs. Commissioner, December 16, 1968, 26 SCRA 382; Sare Enterprises vs. Commissioner, Aug. 28, 1969, 29 SCRA 112; Geotina, etc. vs. Court of Tax Appeals, et al., August 30, 1971, 40 SCRA 362; Commissioner vs. Court of Tax Appeals, et al., January 31, 1972; Lopez vs. Commissioner, et al., January 30, 1971, 37 SCRA 327; Geotina vs. Broadway, etc., et al., January 30, 1971, 37 SCRA 410; Auyong Hian vs. Court of Tax Appeals, et al., September 12, 1974, 59 SCRA 110; and Pacis, et al. vs. Pamaran, etc., et al., March 15, 1974, 56 SCRA 16). Such exclusive jurisdiction precludes the Court of First Instance as well as the Circuit Criminal Court from assuming cognizance of the subject matter (Enrile, et al., vs. Venuya, et al., January 30, 1971, 37 SCRA 381) and divests such courts of the prerogative to replevin properties subject to seizure and forfeiture proceedings for violation of the Tariff and Customs Code (Diosamito, et al. vs. Balanque, et al., July 28, 1969, 28 SCRA 836; Señeris vs. Frias, June 10, 1971, 39 SCRA 533); because proceedings for the forfeiture of goods illegally imported are not criminal in nature since they do not result in the conviction of the wrongdoer nor in the imposition upon him of a penalty (Lazatin vs. Commissioner, et al., July 30, 1969, 28 SCRA 1016).

Respondent Judge claims that the pendency of a seizure proceeding was never brought to his attention (p. 038, rec.) and that he could not have foreseen the possibility that petitioner would be instituting seizure proceedings * * * and besides, it is understood that the order of the court commanding the release of the subject articles was on a premise that herein petitioner was not holding or withholding the same for some other lawful reasons (p. 039, rec.).

The questioned order of respondent Judge is unqualified and contains no intimation that the "release * * * was on a premise that herein petitioner was not holding or withholding the same for some other lawful reason." On the contrary, the tenor of the order is so absolute and so emphatic that it really leaves no alternative for petitioner Collector of Customs except to return the articles.

The records of the case, moreover, reveal that a report of seizure (p. 14, rec.) and a warrant of seizure and detention (p. 15, rec.) were made by petitioner Collector of Customs on June 30, 1971 and on July 9, 1971 respectively. It is patent that respondent Judge knew actually of the existence at least of the report of seizure of June 30, 1971, which is six days prior to his order of dismissal dated July 6, 1971. He should have anticipated that a warrant of seizure and detention will logically be issued as in fact it was issued on July 9, 1971, because it was the petitioner Collector of Customs who filed the criminal complaint directly with him on July 1, 1971. Respondent Judge chose to ignore the presence of the report of seizure dated June 30, 1971, six days before his order of dismissal and the filing of the criminal complaint on July 1, 1971. Prudence should have counselled him, so as not to frustrate the petitioner Collector of Customs in enforcing the tariff and customs laws, against ordering the release of the seized articles without first ascertaining from the petitioner Collector of Customs whether the latter intended to institute or had instituted seizure proceedings.

As aptly expressed by Mr. Justice Barredo in his Concurring Opinion in *People vs. Gutierrez*, supra, "It is not enough that a judge trusts himself or can be trusted as capable of acting in good faith, it is equally important that no circumstance attendant to the proceedings should mar that quality of trustworthiness." We have enjoined judges to apply the law as interpreted by the Supreme Court and not to dispose of a case according to their personal views (*Albert vs. Court of First Instance*, 23 SCRA 948).

IV

In G.R. No. L-36376 (*Enriquez, et al. vs. Hon. Onofre Villaluz, et al.*), the arbitrary denials displayed by respondent Judge of motions presented before him likewise invite some cautionary reminders from this Court.

In this case, petitioners were given an unreasonable period of one (1) day within which to elevate the matter

before this Tribunal. But considering the novelty of the issue, a grant of twenty-four hours to prepare a petition for certiorari is a virtual denial of the motion. And petitioners' motion for an extension of at least one (1) day was peremptorily brushed aside by respondent Judge with one single word - DENIED.

The fact that petitioners succeeded in bringing the matter before the Supreme Court within the constricted period of time granted them is beside the point. More important is the consideration by this Court of the dangers posed by respondent Judge's peremptory denial of a reasonable time.

Indeed, it is commendable to see judges hasten the disposition of cases pending before them. But more commendable would be for judges to contribute their share in maintaining the unswerving faith of litigants in the courts of justice. WE once again stress that "One important judicial norm is that a judge's official conduct should be free from appearance of impropriety" (Luque vs. Kayanan, 29 SCRA 165).

V

But while we sustain the power of the Circuit Criminal Courts to conduct preliminary examination (p. 36), pursuant to OUR constitutional power of administrative supervision over all courts (Sec. 6, Art. X, 1973 Constitution) as a matter of policy, WE enjoin the respondent Judge and other Circuit Criminal Court Judges to concentrate on hearing and deciding criminal cases filed before their courts (see Mateo vs. Villaluz, 50 SCRA 18, 28-29, March 31, 1973). The primary purpose of the creation of the Circuit Criminal Courts in addition to the existing Courts of First Instance, as above intimated, is to mitigate the case load of the Courts of First Instance as well as to expedite the disposition of criminal cases involving serious offenses specified in Section 1 of Republic Act 5179, as amended. Circuit Criminal Judges therefore, should not encumber themselves with the preliminary examination and investigation of criminal complaints, which they should refer to the municipal judge or provincial or city fiscal, who in turn can utilize the assistance of the state prosecutor to conduct such preliminary examination and investigation. Or the Judge of the Circuit Criminal Court can directly request the Secretary of Justice to assign a state prosecutor for the same purpose (Sec. 3, Republic Act No. 5184).

Moreover, it seems that respondent Judge does not have adequate time to hear and dispose of the 34 criminal cases with detention prisoners pending in his sala, aside from the 479 pending cases of voluntary submission by drug addicts, as of January 31, 1975) (A.M. No. 230-CCC, Item 42, Agenda of March 31, 1975), as revealed by his letter dated February 26, 1975, wherein he requested the Supreme Court to renew the temporary detail in his sala of Municipal Judge Hermenegildo C. Cruz of Mandaluyong, Rizal, to assist him. This significant fact should further dissuade him from actively conducting the preliminary investigation of criminal cases directly filed with him.

Furthermore, Judges of the Circuit Criminal Courts whose dockets permit, may be assigned by the Supreme Court for a period not exceeding 6 months, unless with their consent, to assist Judges of regular Courts of First Instance with clogged dockets (Sec. 5 [3], Art. X, 1973 Constitution).

WHEREFORE , IN G.R. NOS. L-34243, 36376, 38688 AND 39525, THE PETITIONS ARE HEREBY DISMISSED AND THE WRITS OF PRELIMINARY INJUNCTION AND/OR RESTRAINING ORDERS ISSUED THEREIN ARE HEREBY LIFTED; IN G.R. NO. L-40031, THE PETITION IS HEREBY DISMISSED; AND IN G.R. NO. L34038, THE ORDER OF RESPONDENT JUDGE DATED JULY 6, 1971 IS HEREBY SET ASIDE AS NULL AND VOID INsofar AS THE SAME DISMISSED THE CRIMINAL CASE WITH PREJUDICE AND INsofar AS THE SAME DIRECTED THE RETURN TO PRIVATE RESPONDENT THEREIN OF THE ARTICLES SEIZED FROM HIM WHICH ARE NOW SUBJECT OF SEIZURE PROCEEDINGS BEFORE THE CUSTOMS AUTHORITIES, AND THE WRIT OF PRELIMINARY INJUNCTION ISSUED THEREIN IS HEREBY MADE PERMANENT. NO COSTS.

Castro, C.J., Teehankee, Antonio, Esguerra, Muñoz Palma, Aquino, and Martin, JJ., concur.

Fernando, J., concurs and submits a brief opinion.

Barredo, J., concurs in a separate opinion.

CONCURRING OPINION

FERNANDO, J.:

The opinion of the Court, both thorough and comprehensive, penned by Justice Makasiar, is impressive for its analytical skill and scholarly attributes. On the whole then, especially so where reference is made to our previous decisions, there is no impediment to full concurrence. This is particularly true where it concerns the ruling announced by this Court, i.e., "that both Section 1(3), Article III of the 1935 Constitution and Section 3, Article IV of the 1973 Constitution provide the source of the power of all Judges, including Judges of the Court of First Instance, the Circuit Criminal Courts, and other courts of equivalent rank, to conduct the examination to determine probable cause before the issuance of the warrant of arrest and therefore sustain the proceedings conducted by respondent Judge leading to the issuance of the warrants of arrest and his referral of the cases to the fiscal or other government prosecutor for the filing of the corresponding information." [1] At that, there is still need, it seems to me, for a few words not only to set forth the extent of my agreement with my brethren but also to indicate what for me are the precise limits of our holding. The full and exhaustive treatment of the specific issue dealing with the power of the circuit criminal courts to conduct preliminary examination, with historical and textual allusions to the previous judicial pronouncements and comparable statutory provisions, certainly a virtue to be commended, may for those not sufficiently discerning, yield implications which, for me, go further than is intended by us. It is my understanding then that the decision reached is at most an affirmation that the present Constitution, as did the 1935 Constitution, confers the power to conduct preliminary examination preparatory to issuing a warrant of arrest, to a circuit criminal court judge. Even then, however, he should for sound policy reasons curb any eagerness or propensity to make use of such competence.

1. To repeat, it is solely the first stage in the criminal process that may lead to the apprehension of the accused that has been passed upon by this Court. It has not considered the second stage, that of preliminary investigation proper, one of equal significance. As far back as 1910, its importance was stressed in *United States vs. Grant and Kennedy*. [2] Thus: "The object or purpose of a preliminary investigation, or a previous inquiry of some kind, before an accused person is placed upon trial, is to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from an open and public accusation of crime, from the trouble, expense, and anxiety of a public trial, and also to protect the State from useless and expensive trials." [3] It is of the essence then that the accused should be heard. There are overtones in the opinion of the Court susceptible to being misinterpreted in this regard, if it be assumed that upon the termination of the preliminary examination the arraignment and trial could then proceed. I would dissociate myself from such a view. I am gratified therefore that it is made explicit therein that our ruling is limited to the power of a judge under the Circuit Criminal Court Act [4] to conduct a preliminary examination. As to his competence regarding a preliminary investigation, it is my understanding that the question has been left open.

2. Respondent Judge was likewise admonished "to concentrate on hearing and deciding criminal cases filed before their courts (see *Mateo vs. Villaluz*, 50 SCRA 18, 28-29, March 31, 1973)." [5] That is as it should be. It is well that it is so. The occasion for its exercise should be minimized. That is the teaching of *Mateo v. Villaluz*, the same respondent Judge in these petitions. The facts could be differentiated, but the principle announced holds true. The

load to be shouldered by a trial judge is heavy enough for him to attend to matters which could be looked after by municipal judges. So this excerpt from Mateo would indicate: 'To avoid any further controversies of this nature, lower court judges are well-advised to limit themselves to the task of adjudication and to leave to others the role of notarizing declarations. The less an occupant of the bench fritters away his time and energy in tasks [that could be left to other hands], the less the danger of his being a participant in any event that might lend itself to the interpretation that his impartiality has been compromised. There is much to be said for displaying zeal and eagerness in stamping out criminality, but that role is hardly fit for a judge who must bide his time until the case is before him. He must ever be on guard lest what is done by him, even from the best of motives, may be thought of as eroding that objectivity and sobriety which are the hallmarks of judicial conduct. Thus should he attend to the performance of the sacred trust that is his.'"[6] For me, the fact that a judge had listened to testimony damaging to a prospective accused, without his being given the opportunity to refute the same, may lead to a subconscious prejudice difficult to erase at the stage of trial.

[1] Opinion, I (36).

[2] 18 Phil. 122.

[3] Ibid, 147. The United States vs. Grant decision was cited with approval in United States vs. Laban, 21 Phil. 297 (1912); United States vs. Carlos, 21 Phil. 553 (1911); United States vs. Go Chanco, 23 Phil. 641 (1912); United States vs. Ipil, 27 Phil. 530 (1914); United States vs. Remegio, 37 Phil. 599 (1918); United States vs. Alabot, 38 Phil. 698 (1918); Uy Kheytn vs. Villareal, 42 Phil. 886 (1920); People vs. Solon, 47 Phil. 443 (1925); People vs. Villegas, 55 Phil. 567 (1931); People vs. Cariñgan, 61 Phil. 416 (1935); People vs. Castillo, 76 Phil. 72 (1946); People vs. Dizon, 76 Phil. 265 (1946); People vs. Zapanta, 79 Phil. 308 (1947); Sayo vs. Chief of Police of Manila, 80 Phil. 859 (1948); Bustos vs. Lucero, 81 Phil. 640 (1948); Lozada vs. Hernandez, 92 Phil. 1051 (1953); Rodriguez vs. Arellano, 96 Phil. 954 (1955); Santos, Jr. vs. Flores, L-18251, Aug. 31, 1952, 5 SCRA 1136; Molinyawe vs. Flores, L-18256, Aug. 31, 1962, 5 SCRA 1137; People vs. Figueroa, L-24273, April 30, 1969, 27 SCRA 1239; Sausi vs. Querubin, L-24122, Jan. 29, 1975, 62 SCRA 154.

[4] Republic Act No. 5179 (1967).

[5] Opinion, V.

[6] L-34756-59, March 31, 1973, 50 SCRA 18, 28-29.

CONCURRING

BARREDO,J.:

I concur in the result of the judgment in these cases, for although the main opinion sustains the authority of Circuit Criminal Courts to conduct preliminary investigations, it strictly ordains, however, that "as a matter of policy (sic) We enjoin the respondent Judge and other Circuit Criminal Court Judges to concentrate on hearing and deciding criminal cases filed before their courts." With such an imperious mandate, I am satisfied that Circuit Criminal Courts will not anymore do what I am fully convinced they are not legally permitted to do. I am certain no Criminal Court Judge will dare deviate from the "policy" announced in the main opinion, which, of course, I say is the policy of Republic Act 5179 itself. Indeed, my uncompromising position is that it is the policy of the law itself, rather than that of this Court alone as the main opinion would seem to imply, that Circuit Criminal Courts should strictly confine themselves to merely trying and deciding the cases assigned to them, and I have

always insisted that it should be on the basis of that very policy of the law itself informed in public interest that this Court should construe the statutory provision here in issue, Section 1 of Republic Act 5179 which provides as follows:

"In each of the sixteen judicial districts for the Court of First Instance as presently constituted, there is hereby created a Circuit Criminal Court with limited jurisdiction, concurrent with the regular Court of First Instance, to try and decide the following criminal cases falling under the original and exclusive jurisdiction of the latter:

'a. Crimes committed by public officers, crimes against persons and crimes against property as defined and penalized under the Revised Penal Code, whether simple or complex with other crimes;

'b. Violations of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, x x x;

'c. Violations of Sections 3601, 3602 and 3604 of the Tariff and Customs Code and Sections 174, 175 and 345 of the National Internal Revenue Code.'"

Thus, the judgment of the Court in these cases will after all effectively effectuate what I maintain is the spirit of the Act, notwithstanding the considerations predicated in the main opinion which, with due respect to my learned brethren in majority, I find it impossible to agree with. And so, I can give my assent to the judgment in these cases without my having to sacrifice my conviction regarding the question of statutory construction herein involved, which I am explaining in this separate opinion. Frankly, I will never be able to comprehend why the majority can give the above provision a construction contrary to what plainly appears to be policy that underlies it, only for them to just the same "enjoin" all Circuit Criminal Courts "as a matter of policy," (of the Court) that they should not conduct preliminary investigations, which I say the statute, as a matter of policy, never intended to allow them to do anyway.

Notwithstanding the scholarly and extended main opinion. I am not persuaded that the legislature ever intended to confer upon Circuit Criminal Courts the power to conduct preliminary investigations. Not only the specific words of the above provision, but the development of the law on preliminary investigations and the circumstances obtaining at the Republic Act 5179 was enacted point unmistakably, in my considered opinion, to this conclusion.

There are already two earlier cases in which this Court had to dwell on the extent of the jurisdiction of the circuit criminal courts. In both of them, the approach was restrictive. Way back in 1968, in the case of *People vs. Paderna*, 22 SCRA 273, the Court was confronted with the question of whether or not the mere fact that under Section 1 (c) of Republic Act 5179, the organic act of the circuit criminal courts, mentions violations of Section 174 of the National Internal Revenue Code to be among the cases under the jurisdiction of said courts, is enough justification for disregarding the penalty provided in the Revenue Code of fine of not less than P50 nor more than £200 and imprisonment of not less than 5 nor more than 30 days when the value of the cigarettes involved does not exceed £500, which ordinarily would make such violation fall within the original jurisdiction of the City Court of La Carlota City and considering such violations to be within the jurisdiction of the corresponding Circuit Criminal Court. The Court, thru Justice Fred Ruiz Castro, resolved the problem this wise:

"The jurisdiction of the circuit criminal courts is thus dependent not only on the type of cases but also on the penalties provided for those cases. Inasmuch as the case at bar falls within the exclusive and original jurisdiction of the city court, it cannot, even if it involves a violation of Section 174 of the Tax Code, be taken cognizance of by the circuit criminal courts the jurisdiction of which is concurrent with that of courts of first instance in criminal cases where the latter's jurisdiction is original and exclusive." (At p. 279.)

Almost four years later, in *Paraguya vs. Tiro*, 41 SCRA 137, the issue was whether or not a case of indirect bribery, a crime committed by a public officer included in Section 1(a) of the Act, but punishable under Article 211 of the Revised Penal Code with arresto mayor, suspension and public censure, penalties which are imposable

by the city of municipal courts concurrently with the courts of first instance, may be considered as within the jurisdiction of the Circuit Criminal Courts. We held that the fact alone that the crime involved was one committed by a public officer did not suffice to place the case within the jurisdiction of said courts. Reiterating the predicate of adherence to the letter of the statute adopted in *Parenda*, supra, Justice J.B.L. Reyes, emphasized the reason therefor thus:

"In fact, the intention of the legislature to bestow unto these special criminal courts limited jurisdiction is clear not only from the provision of the law itself; it was so stated that this limited jurisdiction of the circuit courts would enable them to act with dispatch on the cases cognizable by said tribunals. And, this is precisely the purpose for which the circuit criminal courts were created - — to contribute to the speedy resolution of criminal cases and help curb the progression of criminality in the country (Explanatory Note to Senate Bill No. 388, which became Republic Act No. 5179)" (At p. 142.)

In the cases at bar, it is admitted in the main opinion that because "the primary purpose of the creation of the Circuit Criminal Courts in addition to the existing Courts of First Instance, as above intimated, is to expedite the disposition of criminal cases involving serious offenses specified in Section 1 of Republic Act 5179, . . . Circuit Criminal Judges, therefore, should not encumber themselves with attending to the preliminary examination and investigation of criminal complaints, which they should refer to the Provincial or City Fiscals, who, in turn can utilize the assistance of the state prosecutor to conduct the requisite preliminary examination and investigation. Or the Judge of the Circuit Criminal Court can directly request the Secretary of Justice to assign a state prosecutor for the same purpose." What is more, as if to predicate such observations on actuality and project them in the context of what is happening in the very court of respondent judge, the main opinion invites attention to the number of pending cases and matters therein which compelled respondent judge, according to the opinion, to seek from this Court the detail of a municipal judge to assist him. It further points out that under Section 5(3) Article X of the Constitution, Criminal Court Judges may be temporarily assigned by the Supreme Court to other stations, provided that, without the consent of the judges concerned, such assignment may not last longer than six months.^[1] And to these very apt observations, it may be added that unlike in the regular courts of first instance, in circuit criminal courts "the trial of cases ... once commenced, shall be continuous until terminated and the judgment shall be rendered within thirty days from the time the case is submitted for decision." (Sec. 6, R.A. 5179).

To my mind, all these considerations were precisely what the Congress had in mind when it enacted the law creating the circuit criminal courts. As may be seen, all of these considerations point to the necessity of freeing the said courts from all functions other than "to try and decide" the cases enumerated in the Act. It is inconceivable that with said considerations in view, Congress could have meant by omitting mention of preliminary investigations in the statute that it should nevertheless be construed in the sense of "encumbering", to borrow the language of the main opinion, the circuit criminal courts with the burden of "attending to preliminary examination and investigation of criminal complaints," which the main opinion emphasizes and the legislature must be presumed to have known can be better performed by the multitudinous other offices in the prosecution staff government already referred to above.

It is important to note that the conferment in the Judiciary Act of jurisdiction upon the regular courts of first instance is worded thus:

"SECTION 44. Original jurisdiction. — Courts of First Instance shall have original jurisdiction:

- (a) In all civil actions in which the subject of the litigation is not capable of pecuniary estimation;
- (b) In all civil actions which involve the title to or possession of real property, or any interest therein, or the legality of any tax, impost or assessment, except actions of forcible entry into and detainer on lands or

buildings, original jurisdiction of which is conferred by this Act upon city and municipal courts;

(c) In all cases in which the demand, exclusive of interest, or the value of property in controversy, amounts to more than ten thousand pesos; (RA Nos. 2613 & 3828.)

(d) In all actions in admiralty and maritime jurisdiction, irrespective of the value of the property in controversy or the amount of the demand;

(e) In all matters of probate, both of testate and intestate estates, appointment of guardians, (See also Section 90, and note thereof.) trustees and receivers, and in all actions for annulment of marriage, and in all such special cases and proceedings as are not otherwise provided for;

(f) In all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos;

(g) Over all crimes and offenses committed on the high seas or beyond the jurisdiction of any country, or within any of the navigable waters of the Philippines, on board a ship or watercraft of any kind registered or licensed in the Philippines in accordance with the laws thereof. The jurisdiction herein conferred may be exercised by the Court of First Instance in any province into which the ship or watercraft upon which the crime or offense was committed shall come after the commission thereof: Provided, That the court first lawfully taking cognizance thereof shall have jurisdiction of the same to the exclusion of all other courts in the Philippines, and

(h) Said court and their judges, or any of them, shall have the power to issue writ of injunction, mandamus, certiorari, prohibition quo warranto and habeas corpus in their respective provinces districts, in the manner provided in the Rules of Court."

Significantly, unlike Section 1 of Republic Act 5179, this provision does not say that the Courts of First Instance shall "try and decide" the cases therein enumerated. Rather, it simply says they shall have original jurisdiction "in" and "over" the respective cases mentioned. In other words, Section 1 of Republic Act 5179 does not grant the circuit criminal courts jurisdiction "in" or "over" the cases listed, but, as may be plainly seen in the above-quoted tenor of its pertinent provision, only "the limited jurisdiction ... to try and decide" them. To my mind, this difference in phraseology must have been intentional in order to emphasize the restricted and limited prerogatives of Circuit Criminal Courts, not only as to the nature of the cases that can be filed with them but also as to the extent of their functions and powers relative to said cases.

I maintain that consonant with the need to make of the Circuit Criminal Courts the courts of special and limited jurisdiction designed to attend with utmost expeditiousness to the cases assigned to them, as undoubtedly the law intends them to be, Section 1 of the Act should be construed, even in case of doubt, in the sense not only that the jurisdiction of said courts is limited to the cases which they may take cognizance of, but also in that any other work not strictly part of the functions to "try and decide" said cases, is not contemplated to be performed by them.

It is a familiar rule that the jurisdiction of a court, may not be deemed granted by mere implication, unless perhaps in instances when this is indubitably clear. Whenever there is reason to doubt, as in the case before Us, precisely because of the considerations expounded in the main opinion as to why, as a matter of Court's policy, at least, the circuit criminal courts should refrain from holding preliminary investigations the rule, as 'kn °.J is to deny the existence of power. In this connection, it sh0 be borne in mind that the power to conduct preliminary 'investigations has never been deemed as a mere incidental prerogative of any court. It exists only when duly granted.

It should be noted from the provisions of Section 44 of the Judiciary Act aforequoted that even the authority of the regular courts of first instance to grant writs of injunction, mandamus, certiorari, prohibition, quo warranto and

habeas corpus, which by their nature could reasonably be deemed inferable from the grant of general jurisdiction, had still to be granted expressly to said courts, and only within their respective provinces and districts. And this Court has been very restrictive in construing this particular grant of jurisdiction. (See *Director of Forestry vs. Ruiz*, L-24882, April 30, 1971, 38 SCRA 559, and cases therein cited.) To repeat, such authority would seem to be implicit from the grant of general jurisdiction, and yet We always insist that it should be specifically conferred. Now, is there anything in the conduct of preliminary investigations that makes it more inherent or inseparable from the expressed power "to try and decide" that necessarily, We must consider the same as included in said power or as something that must indispensably be added thereto, such that the authority therefor need not be spelled out in black and white? Withal, if in the case of inferior courts, which everyone knows have always conducted preliminary investigations since the enactment of Act 194 in 1901, the Judiciary Act had to expressly provide for the grant of such authority to them, what special reason is there why the conferment upon circuit criminal courts of the faculty to "try and decide" certain types of criminal cases should be deemed as necessarily including the authority to conduct preliminary investigations related thereto, when according to what the main opinion emphasizes, such function can be better performed by the prosecution staff of the government?

The main opinion holds that it "is plain and evident from Sections 3 and 6 of their organic act, Republic Act 5179" that circuit criminal courts "have the same powers and functions as those conferred upon regular Courts of First Instance necessary to effectively exercise (their) special and limited jurisdiction." But I am afraid this reasoning ignores that "the powers and Actions (of) the regular Courts of First Instance" conferred upon the circuit criminal courts are only those "necessary (for them) to effectively exercise (their) special and limited jurisdiction " and the issue precisely is what is the extent of that special and limited jurisdiction. As I have already pointed out, that "special and limited jurisdiction" is "try and decide" the cases enumerated and this power does not have to be accompanied, whether by logical implication or by the reasons behind the organization of the courts, by the authority to conduct preliminary investigations. I dare say, in connection with the provisions of Section 3 of the Act, that the provisions of laws and Rules of Court, if any, granting jurisdiction to regular courts of first instance to conduct preliminary investigations are inconsistent with the provisions of the Act, considering that these latter provisions contemplate circuit criminal courts which should not undertake the functions of conducting preliminary investigations, as found factually by the main opinion, albeit surprisingly the majority would give weight to such factual finding only to serve as basis for a policy only of the Court, instead of utilizing the same as premise for the proper construction of the Act in order that such policy may be legally effectuated, since it is indeed the policy underlying the law itself. And besides, a careful reading of Section 3 should make it clear to everyone that its phraseology studiously refers not to all the powers of the judges of the Courts of First Instance, but only to "the provisions of the laws and the Rules of Court relative to the Judges of the Courts of First Instance," meaning their qualifications, salaries, transfer etc. and to their powers and prerogatives in "the trial, and disposition and appeal of criminal cases" in the circuit criminal courts, which is plainly consistent with the scope of the power granted to them under Section 1 "'to try and decide."

The main opinion quotes from my concurring opinion in *People vs. Gutierrez*, 36 SCRA 172, apparently to show that in my view, "circuit criminal courts are nothing but additional branches of the regular Courts of First Instance in their respective districts . But the portion quoted from my opinion is not complete, wna I said was this:

"I take it that under Republic Act 5179, Circuit Criminal Courts are nothing but additional branches of the regular Courts of First Instance in their respective districts with the limited concurrent jurisdiction to take cognizance of, try and decide only those cases enumerated in Section 1 of the Act. This is readily implied from Section 3 of the Act which says:

""SECTION 3. The provisions of all laws and the Rules of Court relative to the judges of the Courts of First Instance and the trial, disposition and appeal of criminal cases therein shall be applicable to the circuit judge

and the cases cognizable by them insofar as they are not inconsistent with the provisions of this Act.'

"xxx xxx xxx"

In other words, I adhered closely to the language of the statute and referred to the jurisdiction of the criminal courts as comprising of the power "to take cognizance of, try and decide" only the cases therein enumerated. I did not concede that the authority was broadly "over" those cases, as in Section 44 of Judiciary Act, but strictly "to take cognizance of, try and decide" them.

There is another point which is more transcendental. The main opinion assumes the correctness of the generally prevailing impression that courts of first instance continue to possess the jurisdiction to conduct preliminary investigations. It cites the Rules of Court as the source of such authority. For my part, I am not sure, to put it mildly, that the Supreme Court can arrogate jurisdiction unto itself or grant any to the lower courts by merely promulgating a rule to such effect. I believe it is safer to hold that jurisdiction to act on any given matter may be granted only by statute or legislative enactment, for the simple reason that jurisdiction is substantive and not adjective in nature. And so, the question in my mind is simply this, assuming *arguendo* that circuit criminal courts have all the powers of the regular courts of first instance, which I dispute, is it clear that the latter courts continued to possess, after the Judiciary Act of 1948 went into effect, the power to conduct preliminary investigations? In other words, are the provisions of the Rules of Court invoked in the main opinion, Section 13 of Rule 112, predicated on any law or statute?

According to former Chief Justice Moran, this section was "taken, with amendments, from Section 4 of former Rule 108, which was a substantial re-statement of the ruling of the Supreme Court in one case," citing *People vs. Solon*, *supra*. (See 4 Moran, Rules of Court, p. 117, 1970 ed.) But Sec. 4 of Rule 108 was part of the Rules of Court of 1940, when Act 1627 was still in force. Apparently, when Rule 108 was revised in the 1964 Rules, it was overlooked that under Section 99 of the Judiciary Act, "all laws and rules inconsistent with the provisions of this Act" was repealed thereby wiping away Section 37 of Act 1627.

No matter how many times one may read the provisions of the whole Judiciary Act of 1948 and particularly those that refer to the jurisdiction of the Courts of First Instance, one will never find any word therein that directly or indirectly confers upon said courts the authority to conduct preliminary investigations. In pointing out this patent omission, I am of course assuming that the jurisdiction to conduct preliminary investigations, while sometimes given to courts in spite of its being basically an executive function per *Orendain*,^[2] is not inherent in every court. For instance, in the Judiciary Act itself, it can be clearly seen that as in the case of Act 194, seventy-five years ago, by Section 87 of the Act, the legislature had to expressly vest upon inferior courts the power to conduct such preliminary investigations. Thus, Section 87 provides in unmistakable terms:

xxx xxx xxx

"Said municipal judges and judges of city courts may also conduct preliminary investigation for any offense alleged to have been committed within their respective municipalities and cities which are cognizable by Courts of First Instance and the information filed with their courts without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court."

xxx xxx xxx

If, as the majority maintain, the power to conduct preliminary investigation is vested in all our courts by the Bill of Rights in the Constitution, of what need is there for the provision just quoted? Upon the other hand, if such conferment is merely confirmatory of an existing constitutionally based authority, I see no reason at all why there

should be such an express confirmation of the power of inferior courts alone and none at all of that of the Courts of First Instance.

My position is that the silence of the pertinent provisions of the Judiciary Act on the matter, taken together with the fact that Section 99 of the Act repeals all laws and rules inconsistent with the provisions of this Act, indicates an unmistakable legislative intention to remove from the Courts of First Instance the prerogative under discussion.

It is argued that to thus argue is to rely on repeal by implication which is not favored. I contend, however, that such pose overlooks the fact that the Judiciary Act of 1948 is indisputably in the nature of a codification of all laws existing at the time of its passage related to the judiciary, the judges, the courts and their respective jurisdictions. Such being the case, the applicable rule of statutory construction is that to the effect that when scattered statutes and provisions relative to the same subject matter are embodied subsequently in a single comprehensive legislation, any particular provision incorporated therein and germane to the main subject matter is deemed to be repeated. (Sutherland Statutory Construction, Vol. 1, Sec. 2019, pp. 480-481.) Which is but logical, as otherwise, of what use is the integration?

The main opinion points to certain legislations subsequent to 1948 which it contends constitute recognition on the part of Congress of the continued authority of Courts of First Instance to conduct preliminary investigations, such as, the Dangerous Drugs Act of 1972 or Republic Act 6425, and Republic Act 5180 governing preliminary investigations by fiscals.

As regards Republic Act 5180, the main opinion claims that because Section I thereof makes mention of "investigation . . . conducted by a Court of First Instance ... in accordance with law," said provision is proof of a legislative assumption that said courts can exercise such power. To start with, I have never denied that there are instances when by specific provision of the pertinent laws, preliminary investigations in prosecutions under said laws have to be done by the Courts of First Instance, such as, in violations of the Election Law, the Anti-Subversion Act, Republic Act 1700 and the Dangerous Drugs Act, as amended by Presidential Decree No. 44.

But as I see it, if Republic Act 5180 is of any materiality in this discussion, it is in that it makes more patent that the policy of the law on preliminary investigations is to make them as expeditious as possible but without depriving the accused of the opportunity to be heard, which is likely to happen in a preliminary investigation in a Court of First Instance, following Solon^[3] and Marcos,^[4] unless, of course, the procedure provided for in Section 13, Rule 112 is followed pursuant to Albano vs. Arranz.^[5] It sounds to me rather anachronistic for a law to emphasize the right of an accused to be heard before he is arrested, while it perpetuates in the same breadth as a general rule a procedure which denies that right. Besides, why did not Republic Act 5180 which was approved on the same day as Republic Act 5179, mention preliminary investigation by Circuit Criminal Courts, just as the other later law, Republic Act 6425, cited in the main opinion expressly treated and referred to said courts separately from the Courts of First Instance and Domestic Relations Courts, if really Congress intended to confer the power in issue on them?

The reference to Republic Act 6425 is even more revealing of the insistence of the majority to cling to any drifting straw in their effort to prove their point. Republic Act 6425 originally granted to the Circuit Criminal Courts exclusively jurisdiction over cases for violation thereof. Of course, it also contained provisions about preliminary investigations, but these did not in any manner indicate whether expressly or impliedly that the same courts would have authority to conduct such investigations. Here is the pertinent provision, before it was amended by Presidential Decree No. 44:

"SECTION 39. Jurisdiction of the Circuit Criminal Court. — The Circuit Criminal Court shall have exclusive

original jurisdiction over all cases involving offenses punishable under this Act.

The preliminary investigation of cases filed under this Act shall be resolved within a period of seven (7) days from the date of termination of the preliminary investigation. Where a prima facie case is established, the corresponding information shall be filed in court within twenty-four (24) hours. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case."

It is to be noted that there is here a requirement that the corresponding information should be filed in court within 24 hours. Does not this show that the preliminary investigation is not to be conducted by the court itself? But, as if to make it more patent that it is better that the investigation is undertaken by another authority, Presidential Decree 44 amended the above provision as follows:

"SECTION 39. Jurisdiction. — The Court of First Instance, Circuit Criminal Court, and Juvenile and Domestic Relations Court shall have concurrent original jurisdiction over all cases involving offenses punishable under this Act: Provided, That in cities or provinces where there are Juvenile and Domestic Relations Courts, the said courts shall take exclusive cognizance of cases where the offenders are under sixteen years of age.

The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of their filing.

Where the preliminary investigation is conducted by a prosecuting officer and a prima facie case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a prima facie case is found to exist, the corresponding information shall be filed by the proper prosecuting officer within forty-eight (48) hours from the date of receipt of the records of the case.

Trial of the cases under this section shall be finished by the court not later than ninety (90) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case."

That the foregoing provision does not vest any preliminary investigation authority in any of the courts mentioned is best proven by the fact that the Juvenile and Domestic Relations Courts have never conducted any preliminary investigation whether under its original charter or under this provision. I am not aware that any Court of First Instance has ever done so. The mention of "the preliminary investigation (being) conducted by a judge" in the above provision contemplates, to my mind, not the judges of the courts specified therein, but the proper municipal judges, bearing in mind the considerations already discussed above relative to the tendency of the every new law to remove from superior courts the power to conduct preliminary investigations. Indeed, in this connection, it is to me a mystery how easily my brethren have forgotten that when in another case the very same respondent judge here did nothing more than act as the officer before whom the accused swore a confession which the said accused later on repudiated as having been secured thru violence and intimidation, We disqualified respondent from trying the case for fear that he might not be able to maintain "the cold neutrality of an impartial judge." Quite inconsistently, they now hold that the law in question allows a judge to conduct the preliminary examination of the witnesses of the prosecution to issue a warrant of arrest and to subsequently try the main case on the merits, even if the language of said law in issue is not really clear and the existence of the pretended power is just being gathered from inference of doubtful logic, while, on the other hand, there is a multitude of reasons strongly justifying the contrary construction.

In what I consider, with the pardon I hope of my learned colleagues, to be a desperate but vain effort to provide substantive law basis for Section 13 of Rule 112, the main opinion falls back on of all things the provision of the Bill of Rights of the Constitutions of 1935 and 1973 enjoining that no warrant (of arrest) "may issue but upon

probable cause, to be determined by the judge[6] after examination under oath or affirmation of the complainant and the witnesses he may produce." It is posited that this constitutional mandate is the ultimate source of the authority of the Courts of First Instance, assuming the absence of any statutory basis, to conduct preliminary investigation. As I understand it, the theory is that under the Constitution, warrants of arrests may be issued only by judges (under the 1935 Constitution), and since before doing so, they must examine the complainant and his witnesses under oath, ergo, judges, and I presume that would mean all judges, are constitutionally vested with jurisdiction to conduct preliminary examinations, if not investigations. But as I will demonstrate anon, I sense some kind of non sequitur here. At this point, however, I will just make the observation that if it were true that all judges may conduct preliminary examinations by virtue of the above provision of the Bill of Rights, why did the majority have to go thru all the trouble of a lengthy and laborious, if scholarly, dissertation of why Circuit Criminal Courts have all the powers of the Courts of First Instance to prove that they can like the latter courts conduct preliminary examinations, when all they had to say is that Circuit Criminal Court Judges are among the judges the Constitution contemplates. Moreover, if the theory of the majority is to be pursued to its logical conclusion, then the jurisdiction of judges in the matter in issue cannot but be exclusive, for the Constitution mentions no other officer who may issue warrants of arrest. But then the question would arise, from where did our municipal mayors derive their authority under existing rules to perform such function?

I have carefully perused with deep interest the elaborate statement in the main opinion of the "historical background of our law on criminal procedure." I regret to state, however, that even after such a very refreshing intellectual excursion, I still cannot see that such historical background traced by my scholarly brethren necessarily leads to the conclusion that the power of our courts to conduct preliminary investigation springs from the Constitution or that after the Judiciary Act of 1948 repealed all laws and rules inconsistent with its provisions, the statutory authority of Courts of First Instance to conduct preliminary examinations and investigations still continued to exist. Quite to the contrary, my reading of the history of the law on preliminary investigations in this jurisdiction indicates that this Court has been consistently holding that the right to a preliminary investigation is not a constitutional right, at least in so far as the so-called second stage thereof is concerned. In *Marcos vs. Cruz*, 68 Phil. 96, this Court unanimously held: "In this jurisdiction, the preliminary investigation in criminal cases is not a creation of the Constitution; its origin is statutory and the right thereto can be invoked when so established and granted by law." (at p. 104) According to the same decision, it is only when there is a statute granting such right and still it is denied to the accused in spite of his demand therefor that there is a violation of the due process clause of the Constitution. More authoritatively, in my opinion, in *Hashim vs. Boncan*, 71 Phil. 216, no less than Justice Laurel took occasion to say: "Viewed in the light of fundamental principles, the right to preliminary investigation is statutory, not constitutional." (at p. 225.)

Of course, I am not overlooking the fact that seemingly what the main opinion contends to be constitutionally based is the power of judges to issue warrants of arrest, which corresponds only to the first stage of the prosecution known as preliminary examination, and for this reason, it is maintained the purported ruling can stand together with the *Marcos* and *Hashim* doctrines which relate to the second stage known as the preliminary investigation. I do not see it that way.

My understanding of the Bill of Rights provision pertinent to this discussion, which reads thus:

"Sec. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." (Art. IV, 1973 Constitution.)

is that it is a prohibition against any judge issuing a warrant of arrest without complying with the requirements set forth therein. In fact, an arrest may even be made without a warrant, and it is only when a warrant is needed that the judge who is to issue the same is constitutionally bound to adhere to the conditions therein laid down. Literally, the provision does not refer to all judges, but only to "the judge" who will issue the warrant and that to me is presumably only the judge who by statute is authorized to act in the premises. In fine, the Constitution does not vest upon just any judge, much less upon all judges, jurisdiction to issue warrants of arrests; it merely limits and lays down conditions before any judge authorized by law to issue warrants may do so. In like manner, it cannot be argued that because Section 4(1) of the Bill of Rights provides that privacy of communication and correspondence shall be inviolable except upon lawful order of the court, just any court in the Philippines, even a municipal court can grant such authority or that because the liberty of abode and of travel shall not be impaired except upon lawful order of the court, according to Section 5, also of the Bill, it follows that all courts in the Philippines may act in the premises, regardless of the definition and allocation of jurisdiction by the National Assembly or the legislature, who, after all is constitutionally endowed with authority to precisely make such allocation. (Sec. 1, Art. X, 1973 Constitution.) Indeed, this provision which reads thus:

"SECTION 1. The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law. The National Assembly shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section five hereof."

readily connotes that except in the case of the jurisdiction of the Supreme Court, it is not the Constitution but the statutes that are the sources of the jurisdiction of all the various courts of the country.

Moreover, to my mind, the development of the law on preliminary investigations in this jurisdiction evinces a clear tendency not only to give the accused in all such investigations the opportunity to be present, to cross-examine the witnesses of the prosecution and to present his own evidence, until lately when the right to cross-examine was eliminated by Presidential Decree 77 as amended by Presidential Decree 911. but also (2) to transfer the function of conducting preliminary investigations, sans the power to issue warrants of arrest, to prosecuting officers belonging to the Executive Department to which the prerogative to prosecute or not to prosecute properly belongs in the exercise of the President's duty to see to it that the laws are properly executed. (*Estrella vs. Orenclain*, 37 SCRA 640.) Of course, in special cases wherein it is required by what in the legislature's judgment is the public interest, the particular statute concerned expressly provides that the preliminary investigation be conducted by the Court of First Instance, such as, in cases of violation of Election Code and cases of violations of the Anti-Subversion Law (Act 1700). Indeed, with the broad control given to the Secretary of Justice over crime prosecution by Presidential Decree 911, not to mention Our own ruling in *Estrella* recognizing his power of supervision and control over fiscals, as long as the case has not passed to the jurisdiction of the court, it does not sound realistic and in keeping with the trend of recent developments in the pertinent laws to further allow prosecutions to be initiated in the Courts of First Instance.[7]

At this juncture. I would like to address myself to the separate concurring opinion of Mr. Justice Fernando, whose specialization in matters of constitutional law has won recognition not only for him but also for our country from no less than the organizers of the constitutional aspect of the bicentennial celebration of the American. I do not mind saying that whenever I want to be comprehensive in my study of constitutional issues, I always find his views illuminating. But on the point now in controversy, I find it difficult to see his point. Thus, he particularly underlines his conformity to the ruling in the main opinion that the 1935 as well as the 1973 Constitution "provide the source of the power of all Judges, including Judges of the Courts of First Instance, the Circuit Criminal Courts, and other courts of equivalent rank to determine probable cause before the issuance of arrest and therefore sustain the proceedings conducted by respondent Judge leading to the issuance of the warrants of arrest and his

referral of the cases to the fiscal or other government prosecutor for the filing of the corresponding information," not without hastening to clarify, however, that "it is (his) understanding . . . that the decision reached is at most an affirmation that the present Constitution, as did the 1935 Constitution, confers the power to conduct (the) preliminary examination preparatory to issuing a warrant of arrest, to a circuit criminal court judge" and that "it is only the first stage in the criminal process that may lead to the apprehension of the accused that has been passed upon by the Court," such that as to the judges' competence regarding a preliminary investigation," or "the second stage, (the) preliminary investigation proper," . . . "that question has been left open."

Of course, that such specifically was what the members of the Court were made to understand during the deliberations by the distinguished writer of the main opinion is clear and distinct in my recollection. As a matter of fact, for a moment I entertained earnestly the thought that I could probably join my brethren in the formulation of such a ruling. I had in mind then Mr. Justice Fernando's pose in his book on the Bill of Rights (1970 Edition) that the significance of entrusting the responsibility of determining the existence of probable cause exclusively to judiciary (under the 1935 Constitution) in the defense of freedom cannot be overestimated, (p. 177) But after trying very hard to see it his way, I have to confess, I have arrived at the conclusion that such a proposition cannot stand close scrutiny, if only because even if none but judges may issue warrants of arrest, it is not indispensable that all judges be vested with such power, so it is really up to the legislature to determine which court or judge should be endowed with it.

My knowledge, if limited, of the origin of the competence of judges to issue warrants of arrest is to the effect that it is a prerogative that antedates both the 1935 and the 1973 Constitutions. It was in fact recognized by the American military occupation authorities from the very inception of their rule over the Philippine Islands in 1901, as evidenced by General Orders No. 58, our first code of criminal procedure of American vintage. Surely, such military order cannot in any sense be deemed to be a mandate of constitutional stature. No doubt, Section 13 of Rule 112 appears to be a mere reiteration, if with substantial modifications, of similar provisions of General Orders No. 58 and Section 37 of Act 1627, but I regret I cannot accept the hypothesis emphasized in the main opinion that because said provision of the rules is supposed to be an implementation of the Bill of Rights provision against unreasonable searches and seizures, We must perforce conclude that the Bill of Rights is the source of the jurisdiction of the judges to act in the manner provided in said rule. There can be no dispute about the imperative need to make the safeguards against unreasonable arrests, searches and seizures as air tight as possible, but it is equally undeniable that giving the power to determine the existence of probable cause exclusively to judges is not the only guarantee that can ensure that end. Not only fiscals but even municipal mayors have for decades exercised said power in this jurisdiction, and instead of condemning such practice, this Court has expressly sanctioned the same as being conducive to a more efficient system of prosecution of offenses. (See Hashim vs. Boncan, supra.) What is more, the 1973 Constitution has given the practice explicit constitutional basis by providing that probable cause may also be determined by "such other responsible officer (not necessarily a judge) as may be authorized by law."

More than ever before, I now hold that the Bill of Rights provision under discussion has not been designed to confer the power to determine probable cause to every judge in the courts of the Philippines; rather said provision lays down the conditions and limitations which the particular judges authorized by law to perform such function must observe. I feel I am supported in this view by the following excerpts from the records of the Constitutional Convention of 1934 containing the apt observations of no less than Senator Vicente J. Francisco and Justice Jose P. Laurel:

"EL PRESIDENTS. Tiene la palabra el Delegado por Cavite. EL SR. FRANCISCO RAZONA SV ENMIENDA

SR. FRANCISCO. Senor Presidente y Caballeros de la Convencion: bajo el proyecto del Comite de 7, se puede expedir, mandamientos de registro, con tal de que la peticion vaya acompanada de un affidavit en el que aparezcan hechos y circunstancias que demuestren causas probables. Bajo mi enmienda, un juez puede expedir un mandamiento de registro sino solo despues de haber examinado al denunciante y a sus testigos bajo juramento. Parece ser que la diferencia es grande. El texto en ingles del proyecto dice:

'xxx and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.'

Esta expresion ha sido interpretada por los tribunales de America en el sentido de que el juez tiene dos medios: o puede tomar en cuenta para la expedicion de un mandamiento de registro un affidavit en el que consten hechos y demuestren la causa probable, o mediante examen del denunciante. Someto a la consideracion de esta Asamblea que es completamente peligroso permitir que un juez expida mandamiento de registro, atendiendose exclusivamente a lo que consta en un affidavit. Esta idea de que se puede expedir mandamiento de registro mediante affidavit, o sea, solamente mediante un documento jurado en el que aparezcan hechos probables, no ha sido aceptada por esta jurisdiccion, no solamente en la practica sino tambien por la orden general Num. 58. Esta convencion, creo, se habra fijado que en dicha Orden General Num. 58 esta disposicion que aparece en el proyecto del Comite de 7 que es una reproduccion o copia del precepto que aparece en el bill de Filipinos y luego en la Ley Jones, aparece reproducida, como ya he dicho, en la Orden General Num. 58, como articulo 27. Este articulo 27, dice lo siguiente: 'No se expedir a mandamiento de registro sino por causa probable y por falta de peticion apoyada por juramento'. Como ya he dicho, 'peticion apoyada por juramento' puede ser testimonio del festigo o affidavit.

Considerandose, sin embargo, que estos es verdaderamente peligroso para el derecho que tiene un individuo a la seguridad de sus bienes y papeles, nuestro mismoCodigo de Procedimiento Civil inserta en su Articulo 28 una disposicion que exige como requisito 'sine quanon' el que el Juez no pueda expedir mandamiento de registro sino mediante el examen de testigos, especialmente del denunciante. Este articulo viene a ser el Articulo 28 delCodigo de Procedimiento Civil que dice lo siguiente: 'El Juez de Primera Instancia o el Juez de paz debera, antes de expedir el mandamiento, examinar a bajo juramento al denunciante o al testigo presente, consignando sus declaraciones por escrito.' De modo que mi enmienda es a tenor o en consonancia con esta disposicion legal. Como ya he dicho, si mantuvieramos el precepto del proyecto de constitucion, esta disposicion de la Orden General Num. 58 podra en cierto modo ser contradictoria al precepto del proyecto de constitucion, y nosotros sabemos muy bien que si se aprobara una constitucion en la forma como esta el precepto, cuya enmienda pido, y si encontrara una discrepancia sustancial entre dicho precepto y elCodigo de Procedimiento Civil, creo que este ultimo tendria que quedarse derogado, o al menos no puede mantenerse este precepto por anti-constitucional. Pero yo creo que ninguno de los miembros de esta Asamblea vera que mi enmienda no responde a una razon fundamental y a una necesidad que se ha sentido en la practica. Los abogados que estamos en el ejercicio de la profesion hemos visto muchas veces casos en que agent es secretos consiguen mandamientos de registro solamente mediante la presentacion de un affidavit que reune los requisitos de la Ley. Pero que expedido el registro e impugnados despues los terminos del affidavit se descubre que los hechos que aparecen en el mismo son completamente falsos. De ahi que si queremos salvaguardar en todo lo posible el derecho de un individuo a arrestos o registros arbitrarios; si queremos que el derecho de! individuo a la seguridad de sus bienes o papeles este rodeado de todas las garantias que puedan impedir o que impidan la expedicion de registros inmotivados o infundados que pueden dar lugar a molestias o vejaciones injustas e irreparables, creo que debemos hacer que en nuestra constitucion se consigne el precepto tal como yo propongo que se enmienda. " (Pp. 750- 752, Vol. III.)

"EL PRESIDENTE. El Delegado por Batangas (Senor Laurel) acepta la enmienda?

I cannot close this separate opinion without inviting attention to certain specific points of procedure which the main opinion seems not to have bothered to pass upon, notwithstanding what I consider to be their importance. In

G .R. No. L-34038,1 notice that respondent judge conducted a preliminary investigation on the basis of nothing more than a letter-complaint of the petitioner Collector of Customs. It is not stated whether or not it was in due form or under oath. While as Mr. Justice Fernando stresses, this decision recognizes only the power of respondent judge to conduct the first stage or the preliminary examination, in G.R. No L--34038, L-34243, L- 39525 and L-40031, what are actually involved are preliminary investigations, both the first and second stages. It is only in G.R. Nos. L-36376 and L-38688 that respondent judge has not been able to conduct even the preliminary examination. Frankly, I am at a loss as to how the dispositive portion of Our judgment is to be understood, considering that the consensus among the members of the Court, as attested to by Mr. Justice Fernando, reaches only preliminary examinations and not preliminary investigations, in order precisely to avoid having to overrule Hashim vs. Boncan and Marcos vs. Cruz, which I understand some members of the Court are not ready to do.

Regarding G.R. No. L-34038,1 agree that respondent judge exceeded his authority in providing that his order of dismissal is with prejudice and in ordering the return of the articles seized by the customs authorities to his co-respondent Makapugay. Of course, anyway, in legal contemplation the qualification "with prejudice" thus made by respondent judge means nothing. In no way can it have the effect of jeopardy, since what was conducted by him was only a preliminary investigation, which in my opinion is unauthorized and void. And assuming it to be valid, there would be no need of setting aside the order of dismissal itself; it is enough to say that it is a dismissal before arraignment and jeopardy has not thereby attached, the express qualification therein of "with prejudice" notwithstanding.

IN VIEW OF ALL THE FOREGOING, I vote to grant the petitions in G.R. No. L-34038 insofar as the respondent judge's impugned order of July 6, 1971 orders the return of the articles seized to his co-respondent Makapugay, and insofar as G.R. Nos. L-34243, L-36376, L-39525, L-38688 and L-40031 are concerned, I am giving my concurrence to the judgment therein subject to the qualifications I have discussed in this separate opinion.

SR. LAUREL. No, senor Presidente, y quisiera dec'tr dos palabras.

MR. LAUREL. Mr. President and Gentlemen of the Convention: The anomalies pointed out by the Honorable gentleman from Cavite, Mr. Francisco, if they ever occur at the present time, it is because of the irregularities committed by some justices. The amendment introduced by the distinguished Delegate from Cavite is already covered by existing legislation, and if those irregularities pointed out by him really occurred, it is because some justices have not enforced and adhered to the specific provision of the General Order. The General Order, or the Code of Criminal Procedure, now provides that the judge, before issuing a search warrant, must examine the complainant and his witnesses and that he must take their depositions in writing. The reason why we are in favor of this amendment is because we are incorporating in our constitution something of a fundamental character. Now, before a judge could issue a search warrant, he must be under the obligation to examine personally under oath the complainant and if he has any witness, the witnesses that he may produce. It is not necessary for me to recall here one of the grievances of the early settlers in America which was one of the causes of the revolution against the mother country, England; the issuing of the so-called general search warrant. It is, therefore, quite important that we impose this obligation upon the judge, so that he will not be issuing search warrant in blank, or simply accompanied by affidavits, but that he must consider the sanctity of the home. It is necessary that we surround that power with the necessary constitutional guaranty. You might say that as this amendment is already in the general legislation, what is the necessity of incorporating this in the constitution. The necessity consists in that the constitution is something permanent for the protection of the individual citizen. It is proper that we incorporate that provision rather than general legislation in this constitution that we shall adopt. For this reason, the committee accepts and approves of the amendment as suggested by Delegate Francisco" (Pp. 757-758, Vol.

III.)

And so, since there is neither any constitutional provision nor statute that presently confers on Judges of the Courts of First Instance the power to conduct preliminary examinations, and the trend of our laws is to leave such function to other responsible officers, except the very act of issuing the warrant of arrest, I have no alternative but to deny to Circuit Criminal Courts such power.

[1]Under Section 7 of Republic Act 5179, itself the Secretary of Justice, (now the Supreme Court) could make Circuit Criminal Court Judges hold sessions and try cases pertaining to other districts for a period of not more than three months.

[2]Estrella v. Orendain, G.R. No. L-19611, February 27, 1971, 37 SCRA 640.

[3]People vs. Solon, 47 Phil. 443.

[4]Marcos vs. Cruz, 68 Phil. 96.

[5]15 SCRA 518.

[6]In the 1973 Constitution includes "such other responsible officer as may be authorized by law." (Sec. 3, Article IV).

[7] In Album) vs. Arranz, supra, the Supreme Court held, without delving into the question of whether or not the power of Courts of First Instance to conduct preliminary in estimation has been eliminated in the Judiciary Act of 1948. that under Section 13 of Rule I 12. the Courts of First Instance have to give (he accused a chance to be heard before issuing a warrant of arrest. Even then, the question of the repeal of Act 1627 was not raised in this case.

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