

**THE CITY OF MANILA, PETITIONER, VS. JUAN POSADAS, JR.,
COLLECTOR OF INTERNAL REVENUE, BEN F. WRIGHT, INSULAR
AUDITOR, AND THE METROPOLITAN WATER DISTRICT,
RESPONDENTS.**

G.R. No. 23551. November 25, 1925

Ponente: STATEMENT This is an original petition for mandamus, in which it is alleged: "I. That the petitioner is a municipal corporation organized under the provisions of Chapter 60, Title X, of Act No. 2711 of the Philippine Legislature, known as the Administrative Code, and is empowered to sue and be sued. "II. That the respondent Juan Posadas, jr., is, and during the period of time mentioned in this petition was, the Collector of Internal Revenue of the Government of the Philippine Islands; the respondents Ben F. Wright and Vicente Carmona are, and during the same period were, the Insular Auditor and Insular Treasurer, respectively, of the Philippine Islands, and the respondent Metropolitan Water District is a public corporation created by Act No. 2832, with powers to sue and be sued. "III. That the petitioner is entitled to a part and portion, determined by law, of the internal revenue collected by the respondent, the Collector of Internal Revenue (see sec. 488, Adm. Code), as well as to a certain per cent of the one and one-half per cent tax imposed on merchants, manufacturers and commission merchants (see sec. 3, Act No. 3065), and that petitioner's share of said internal revenue and one and one-half per cent tax does not constitute a credit or debt owing by, and due from, the Insular Government to the petitioner, but is a property of the petitioner, belonging and appertaining to it both as a province and as a municipality of the Philippine Islands (see sec. 495, par. 2, Adm. Code), used and to be used by the petitioner for the purpose of defraying the expenses necessary for its existence and operation. "IV. That the respondent, the Collector of Internal Revenue, in compliance with his ministerial duty imposed upon him by section 497 of the Administrative Code to pay quarterly to the petitioner, the allotments of said internal revenue and percentage tax belonging to it, has been in the past drawing warrants for said allotments payable to the petitioner; but that from and after the month of January, 1922, the said respondent has ceased to make such payments to the petitioner, and has drawn warrants for such internal revenue and percentage tax allotments belonging to the petitioner, payable to the Metropolitan Water District, a water corporation created by Act No. 2832 of the Philippine Legislature. "V. That the petitioner is informed, and, therefore, alleges, that the transfer and payment of said allotments of the internal revenue and percentage tax, belonging to the petitioner, to the said Metropolitan Water District has been made by the respondent Collector of Internal Revenue by and under certain instruction of the respondent Insular Auditor, dated January 5, 1922, a certified copy of which is attached hereto and made a part hereof, marked as Exhibit A. "VI. That the petitioner is also informed, and, therefore, alleges, that the respondent Insular Auditor has instructed his co-respondent Collector of Internal Revenue to pay the said allotments of internal revenue and percentage tax aforementioned, belonging to the petitioner, to the said Metropolitan Water District, instead of the petitioner, for the purpose of setting-off certain alleged debts of the petitioner for alleged water services rendered it by the said Metropolitan Water District." It is then alleged that upon receipt of such information, the city notified the Collector of Internal Revenue that such proceedings were illegal and void, and that in the future payments should be made to the City of Manila, in accord with the provisions of section 497 of the Administrative Code. "VIII. That in spite of the letter or communication sent by the petitioner, through its attorney, to the respondent Collector of Internal Revenue, the latter, following instructions of the other respondent, Insular Auditor, informed the petitioner by a communication bearing date of January 5, 1925, which is hereto attached and made a part hereof as Exhibit C, that he would continue making payments of the share belonging to the petitioner of the internal revenue and of the especial tax imposed by Act No. 3065, including that corresponding to the last quarter of the year 1924, in favor of the respondent Metropolitan Water District, and the petitioner believes, and, therefore, alleges that said respondent Collector of

Internal Revenue will carry out such threats unless timely prevented from so doing by this Honorable Court. "IX. That there does not exist between the Metropolitan Water District, which is neither a governmental entity, nor office, nor branch of the Insular Government (see sec. 1, Act No. 2832), and the petitioner City of Manila, any account the settlement of which the respondent Insular Auditor could legally authorize and enforce. "X. That the petitioner does not owe anything to the Metropolitan Water District by way of alleged water service rendered by said District to said petitioner; and that the latter has up to the present time been questioning the power of said District to render and collect any bill for water supplied to the petitioner. "XI. That Act No. 2832 does not empower the Metropolitan Water District, either expressly or impliedly or in general terms, to charge for water consumed by the petitioner, from the water system of the City of Manila. * * * * *

"XIX. That the said Act No. 2832 did not have more object, and in fact, did not do more than to transfer, from the petitioner to the Metropolitan Water District, the possession, administration, control and management of the sewer and water supply systems of the City of Manila, and, to this effect, has provided, in its section 8 that the said District receive and assume all assets and liabilities together with the bonds sinking funds of said systems, the same as if it were a mere receiver or judicial depository. * * * * *

"XXI. That as one of the liabilities of the water supply system of the City of Manila, and among the charges, obligations and responsibilities going with said system which constitutes a part of said liabilities, is that of furnishing water free of charge to the petitioner, in its aforesaid capacities as owner and fiduciary, for all its uses and needs. * * * * *

"XXV. That even supposing that the respondent Insular Auditor is empowered to settle accounts outstanding between the petitioner and the Metropolitan Water District, the said petitioner has up to the present time contested the bills of the latter for alleged water services rendered the petitioner for the reason that the same are not authorized by law, and that said Insular Auditor is not authorized to settle or adjust accounts which, not being based upon any provision of law, are only made so by an erroneous interpretation of the law by said Auditor, by disposing in favor of said District of funds clearly belonging to the petitioner, such as its share in the collections obtained by the enforcement of the internal revenue laws and, of Act No. 3065. "XXVI. That it is a ministerial duty on the part of the respondent Collector of Internal Revenue to make in favor of the petitioner quarterly allotments of the share of internal revenue collected by him, corresponding to said petitioner, and of its portion of the tax imposed by Act No. 3065. (Sec. 497, Adm. Code.) "XXVII. That there is no law authorizing the respondent Insular Auditor to prevent his co-respondent Collector of Internal Revenue from complying with his ministerial duty referred to in the next preceding paragraph hereof, or to give the latter instructions to the effect that the abovementioned allotments which, by clear and express provision of law, ought to be made in favor of the petitioner, should be made and paid in the name and in favor of the Metropolitan Water District; nor is said respondent Insular Auditor also authorized by any law to constitute himself a judge and arbiter of disputes regarding the interpretation of laws arising between a municipal corporation and a public corporation which does not belong to the Insular Government or any executive branch of the Government of the Philippine Islands. * * * * *

"XXX. That the respondent Ben F. Wright, Insular Auditor, is without authority of law to issue a warrant by himself, much less a warrant covering amounts payable and chargeable against the apportionment of the City of Manila in the internal revenue collections and special assessment imposed by Act No. 3065. "XXXI. That the respondent Vicente Carmona, Insular Treasurer, is likewise without any authority of law to honor, cash or otherwise pay out of the funds belonging to the petitioner as aforesaid, any check, warrant or order of payment issued by the respondent Ben F. Wright, Insular Auditor, or by any other officer, except only after judicial determination of the present controversy. "XXXII. That to permit such an open violation of the Jaw by the herein respondents, the aforesaid warrants corresponding to the allotments of funds of internal revenue pertaining to the petitioner, collected during the last quarter of 1924, as well as those which may thereafter be collected and may be payable to said petitioner, would be issued and made payable to the Metropolitan Water District, in violation of the law, and to the serious detriment of the petitioner's interests in particular and of the public interests in general. "XXXIII. That as a result of the acts of the respondents above related, the petitioner has suffered and will suffer irreparable damages and has encountered and will encounter serious and considerable embarrassments and obstacles in the discharge of its corporate and governmental functions, unless said respondents are immediately restrained and enjoined from such acts by this Honorable Tribunal." The Metropolitan Water District is made a party defendant, for the reason that it claims to have interests which are adverse to those of the petitioner. It is then alleged that the city does not have any plain, speedy or adequate remedy in the ordinary course of

law. Under our view of the case, the foregoing allegations are the only ones which are material to this opinion. The complaint, which is quite voluminous, also purports to give a history of the water system of the City of Manila, and alleges in substance that any title to such water system which the Metropolitan Water District may have is held by it in trust and for the use and benefit of the city. To this petition, a demurrer was filed by the defendants upon the ground that it did not state facts sufficient to constitute a cause of action. After arguments were heard, and the respective briefs of opposing counsel were submitted, the demurrer of the defendants was overruled, and an answer was filed, in which they deny all of the material allegations of the petition, and as a special defense allege: "1. That when the water and sewerage system referred to in the petition was under the administration of the sewer and waterworks division of the engineering and public works department of the City of Manila, the other departments of the city paid for water and other services furnished to them by said division; "2. That the Metropolitan Water District since its organization in the year 1919 up to the present has been furnishing water and rendering water services to the government of the City of Manila; "3. That the government of the City of Manila has been voluntarily paying to the Metropolitan Water District for some of the water and water services above mentioned in the amounts, for the purposes, and for the period specified in the statement marked Exhibit A attached to this answer and made a part thereof; "4. That on January 28, 1924, a supposed majority of the Board of Directors of the Metropolitan Water District passed a resolution exempting the government of the City of Manila from fees for the water consumed by the fire and public hydrants installed in said City; but upon appeal duly taken by the minority of said Board to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, the Governor-General in an indorsement dated September 18, 1924, reversed the above resolution of the alleged majority of the Board and decided 'that the City of Manila shall pay for all services rendered by the Metropolitan Water District.' A copy of the correspondence in regard to the above resolution, appeal, and decision, marked Exhibit B is hereto attached and made a part hereof; "5. That on August 11, 1924, a majority of the Board of Directors of the Metropolitan Water District approved a resolution to the effect that the Secretary of the Interior be 'requested to recommend to the Legislature the amendment of the Organic Act-of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants;' but the minority members of the Board duly appealed from this resolution to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, and the Governor-General rendered the same decision mentioned in the next preceding paragraph. A copy of the correspondence referring to this matter, marked Exhibit C, is hereto attached and made a part hereof;" It is then alleged that on November 17, 1924, the Board. of Directors of the Metropolitan Water District unanimously approved Resolution No. 21, entitled "A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District," in and by which all consumers of water were to be charged uniform rates. "7. That the Metropolitan Water District has been sending bills to the government of the City of Manila for the collection of the value of the water and water services which it had been furnishing to said city; but while said government has been paying some of those bills it has refused to pay others; "8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066; "9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper; "10. That the Insular Auditor then made demand on the City of Manila for the payment and settlement of said claim, advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand; "11. That thereupon the Insular Auditor instructed the Collector of Internal Revenue that thereafter and until further notice, all warrants covering the internal revenue collections allotted to the City of Manila be drawn by said Collector in favor of the Metropolitan Water District instead of said city as theretofore; "12. That by virtue of an arrangement between the Insular Auditor and the Collector of Internal Revenue for the purpose of putting the present question to a test, the latter officer issued warrant No. 636, dated December 9, 1924, for the sum of P21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of

P3,856.04, both covering the internal revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue; "13. That on January 5, 1925, the Collector of Internal Revenue, in answer to a communication from the City Fiscal, advised the latter that pursuant to subsequent instructions from the Insular Auditor, he would, within ten days from said date, proceed to issue the warrants for the abovementioned sums, in favor of the Metropolitan Water District, but due to the preliminary injunction issued in the present case the Collector of Internal Revenue was prevented from doing so." To this answer, the petitioner filed a demurrer upon the ground, first, that the answer does not state facts sufficient to constitute a defense, and, second, that the answer is ambiguous, unintelligible and uncertain. Hence, the only question now before this court is whether or not the facts alleged in the special defense constitute a defense to plaintiff's cause of action.

JOHNS, J.: Section 2427 of the Administrative Code says: "This chapter shall be known as the Charter of the City of Manila." Section 2428 provides: "The City of Manila constitutes a political body corporate and as such is endowed with the attribute of perpetual succession and possessed of the powers which pertain to a municipal corporation, to be exercised in conformity with the provisions of this charter." Section 2429 provides: "The city may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold, lease, convey, and dispose of real and personal property for the general interests of the city, condemn private property for public use, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution, and exercise all the powers hereinafter conferred." Section 2434, as amended by Act No. 2774, provides: "The Mayor shall be the chief executive of the city, and as such, shall have immediate control over the executive functions of the different departments, subject to the authority and supervision of the Secretary of the Interior. "The Mayor shall be appointed by the Governor-General with the consent of the Senate, shall hold office for three years unless sooner removed, * * *." Section 2439 provides: "The Municipal Board shall be the legislative body of the city, and shall consist of ten elective members who shall hold office for four years or until their successors are elected and qualified. The members of the Board shall elect each year from among their number a president, who for one year shall preside at all meetings of the Board at which he is present. In his absence, the Board shall elect one of its members as temporary presiding officer. The president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the board." This was amended so as to make the terms of office of the members of the Board for a period of three years. Section 2440 provides: "The members of the Municipal Board shall be elected at large from the entire city, and each of them at the time of his election shall be a resident for at least one year, and a qualified elector, of his assembly district, and not less than twenty-three years of age. * * *." Section 2442 provides: "The Board shall make all appropriations for the expenses of the government of the city. * * *." Section 2444, as amended by Act No. 2774, specifies and defines the "General powers and duties of the Board," which are very broad and comprehensive, and covers all matters which are necessary and material to the administration of a government by the city. Subsection (u) of that section provides: "For the laying out, construction, and improvement, and to regulate the use, of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places; * * *" and subsection, (x) provides: "For the maintenance of waterworks for the purpose of supplying water to the inhabitants of the city, and for the purification of the source of supply and the places through which the same passes, and to regulate the consumption and use of the water; to fix and provide for the collection of rents therefore; and to regulate the construction, repair, and use of hydrants, pumps, cisterns, and reservoirs." Section 2465, as amended by Acts Nos. 3043 and 3169, provides: "The law department shall consist of the fiscal of the city and of seven assistants, who shall discharge their duties under the general supervision of the Attorney-General. The fiscal of the city shall be the chief legal adviser of the city and all offices and departments thereof; shall represent the city in all civil cases wherein the city or any officer thereof in his official capacity is a party; * * *." Section 2468 provides: "The municipal court shall have territorial jurisdiction embracing the entire police jurisdiction of the city, * * *." It will thus be seen that under the terms and provisions of its charter, the City of Manila has both executive, legislative and judicial powers, and that all of such powers are vested and conferred by an Act of the Legislature of the Philippine Islands. Section 3 of the Organic Act or what is known as the Jones Law says: "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. * * * "That no money shall be paid out of the

treasury except in pursuance of an appropriation by law. * * * * * "That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only." Section 8 provides: "That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act." Section 490 of the Administrative Code says: "Disposition of internal revenue in general.—Internal revenue collected under the laws of the Philippine Islands and not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section." Section 491 provides: "Allotments of internal revenue for special purposes.—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road and bridge allotment, and twenty per centum as a municipal allotment; but the amounts allotted to said several purposes during any year shall not be greater than the amount allotted for the same purposes during the fiscal year nineteen hundred and nine." Section 492 provides: "Apportionment and use of provincial allotment.—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively." Section 494 provides: "Apportionment and use of municipal allotment.—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided." Section 495 provides: ***** "The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other." Section 497 provides: "Warrants for quarterly payment of allotments.—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue." It appears from the answer of the defendants that under the terms and provisions of said section 497, the Collector of Internal Revenue: "Issued warrant No. 636, dated December 9, 1924, for the sum of P21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of P3,856.04, both covering the internal revenue allotment of the City of Manila, in favor of said City instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue." That is to say, such warrants represent the amount which the city should receive as its allotment from and out of the "internal revenues collected under the laws of the Philippine Islands," and that fact is admitted by defendants' answer. This money is to be paid to the city from and out of the public revenues of the Government, and it is public money, which has been assessed, levied and collected by the Government for governmental purposes, and the law says that the City of Manila shall have and receive twenty per centum of such money as a municipal allotment, and it also says that it shall receive that money quarterly "upon warrants drawn by the Collector of Internal Revenue." When the money was assessed, levied and collected, in so far as the City of Manila is concerned, it was assessed, levied and collected for a specific purpose, and for such reason, it should "be treated as a special fund in the treasury and paid out for such purpose only." The money was public money in the Treasury of the Government, and it was there held in trust for the sole use and benefit of the city. The Jones Law further provides: "That no money shall be paid out of the Treasury except in pursuance of an appropriation by law." (Sec. 3.) And in this instance, an appropriation could only be made by the Legislature of the Philippine Islands or the legislative body of the City of Manila. There is no claim or pretense that any appropriation has ever been made out of the public funds to pay the claim of the Metropolitan Water District against the City of Manila, and yet in legal effect the defendants seek to take money out of the Treasury of the Philippine Islands which belongs to the Treasury of the City of Manila, and to pay the private debt which the Metropolitan Water District claims to have against the City of Manila. The City of Manila has no authority to pay any debt against it, "except in pursuance of an appropriation by law." Neither has any person any authority to take money out of the Treasury of the Government for any purpose, "except in pursuance of an appropriation by law," and there is no claim or pretense that any appropriation was ever made by the Government or the City of Manila to pay the claim of the Metropolitan Water District against the City of Manila. In the case of *Reeside vs. Walker*, Secretary of the Treasury of the United States (52 U. S., 271), the Supreme Court of the United States says: "Where the United States were the plaintiffs, and a verdict was rendered that they were indebted to the defendant, and an application was made for a mandamus to compel the Secretary of the Treasury to credit the defendant upon the books of the Treasury with the amount of the verdict, and to

pay the same, the mandamus was properly refused by the Circuit Court. For a mandamus will only lie against a ministerial officer to do some ministerial act where the laws require him to do it and he improperly refuses to do so. "Besides, there was no appropriation made by law, and no officer of the government can pay a debt due by the United States without an appropriation by Congress." And on page 290, the opinion says: "No officer, however high, not even the President, much less a Secretary of the Treasury, or Treasurer, is empowered to pay debts of the United States generally, when presented to them. If, therefore, the petition in this case was allowed so far as to order the verdict against the United States to be entered on the books of the Treasury Department, the plaintiff would be as far from having a claim on the Secretary or Treasurer to pay it as now. The difficulty in the way is the want of any appropriation by Congress to pay this claim. It is a well-known constitutional provision, that no money can be taken or drawn from the Treasury except under an appropriation by Congress. (See Constitution, art. 1, sec. 9 [1 Stat. at L., 15].) "However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of anything not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion." As stated, the City of Manila is a municipal corporation with broad and general legislative powers given to it by the Legislature. The Metropolitan Water District was also created by Act No. 2832 of the Legislature, and is entitled: "An Act creating a public corporation denominated the Metropolitan Water District, prescribing its functions and activities, and for other purposes." Section 2 provides: "Powers and general functions of the District.—The powers, functions, and activities of the Metropolitan Water District of Manila shall be the following: "(a) To have continuous succession under its corporate name until otherwise provided by law; "(b) To prescribe its by-laws; "(c) To adopt and use a seal and alter it at its pleasure; "(d) To sue and be sued in any court; "(e) To construct, maintain, and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of the District, both for domestic and other purposes; to purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix and provide for the collections of rents therefor; etc." Section 3 provides (as amended by Act No. 3109): "District Board; its members, reports to the Department of the Interior.—Unless otherwise provided by law, all corporative powers of the Metropolitan Water District shall be exercised, its business managed, and its property kept and preserved, by a Board to be composed of the Mayor of the City of Manila, the President of the Municipal Board of the City of Manila, the governor of the Province of Rizal, the Director of Public Works or his representative, the engineer of the City of Manila, the city treasurer, and a taxpayer of the district, being a resident of the City of Manila, appointed by the Governor-General, with the consent of the Senate." Section 8 provides: "Assets and liabilities of the Manila water and sewer system; their transfer to the District; sinking fund and Government guaranty.—The District Board is hereby authorized and directed to receive and assume on behalf of the Metropolitan Water District all assets and liabilities pertaining to the sewerage and waterworks system of the City of Manila, together with the sewerage and waterworks bonds sinking funds, and of all the indebtedness in general of the present sewer and water system of the City of Manila, and in turn to pledge such assets as security for the payment of the sewerage and waterworks bonded debt thus acquired." Section 10 provides: "Powers reserved to the Legislature.—This Act or any part thereof may be amended or repealed at any date by legislative authority, and the Metropolitan Water District may be reorganized or dissolved by legislative provision." That is to say, the City of Manila is a municipal corporation, deriving all of its powers from the legislature, and the Metropolitan Water District is a public corporation, as distinguished from a municipal corporation, and derives all of its powers from the Legislature. The City of Manila derives all of its revenues from public funds in the nature of fines, licenses and taxes assessed, levied and collected for its maintenance. The Metropolitan Water District derives all of its revenues from private sources and monies which it collects from consumers of its waters. Under the facts alleged in the answer, the defendants undertook to take the money out of the Government Treasury which belongs to the city and use it to pay a disputed claim of a public corporation against the city over the vigorous protest of the city. Assuming all of such facts to be true, the answer alleges as a defense: "8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066." Section 588 of the Administrative Code, as amended by Act No. 3066, provides: "Authority of auditor in adjustment of accounts between offices.—The Insular Auditor shall have the power, subject to such regulations as may be prescribed therefor, to

authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments." Act No. 3066 is entitled "An Act to amend certain sections of the Administrative Code, and for other purposes." Section 584 of the Administrative Code, as amended by Act No. 3066, provides: "General jurisdiction of Bureau of Audits.—The authority and powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records, and papers relating to such accounts, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches. The said jurisdiction shall also extend to all corporations established and organized in accordance with the laws of the Philippine Islands wherein the Government of the said Islands or any of its branches owns the majority of the stock. * * *." Section 593, as amended by the same Act, provides: "Auditing districts; assignment and compensation of district auditors.—The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts, * * *." These twenty-three districts are grouped into four divisions. There is nothing in any of these provisions which would authorize or justify the Insular Auditor to compel a municipal corporation to pay a claim to a public corporation where the city disputes the claim. The question involved between the city and the Metropolitan Water District is not one of an accounting. There is no pretense that the City of Manila has any claim of any kind against the Metropolitan Water District, and the only claim which the Metropolitan Water District has against the city is for the use of water, and the city disputes the validity of the claim. Hence, the question involved between the city and the Metropolitan Water District is one of legal liability, and of legal liability only. The answer further alleges as a defense: "9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper." That defense is based on the assumption that the Auditor has judicial powers, and yet there is no claim or pretense that any hearing was ever had or that any process was ever served on the city, or that it ever had any previous notice of the proceeding, or that it was given an opportunity to defend, and yet the record shows that the Auditor knew that the city denied any liability. In defining what is "due process of law," Words and Phrases, vol. 3, says: Page 2227: "The principle that no man shall be deprived of his liberty or property except by the 'law of the land,' or its synonym, 'due process of law,' is older than written constitutions—older even than Runnymede—and breathes so palpably of exact justice that it needs no formulation in the organic law. * * *." Page 2230: " 'Due process of law' is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the process be judicial or administrative or executive in its nature. " 'Due process of law,' in its constitutional meaning, includes administrative process of the customary sort, as well as judicial process." Page 2238: " 'To give the clause of the Constitution which guaranties that "no person shall be deprived of life, liberty, or property without due process of law," therefore, any value, it must be understood to mean that no person shall be deprived by any form of legislation or governmental action of either life, liberty, or property, except as the consequence of some judicial proceeding, appropriately and legally conducted. It shows that a law which by its own inherent force extinguishes rights of property, or compels their extinction, without any legal process whatever, comes directly in conflict with the Constitution.' " Page 2243: "'Due process of law' implies that whenever, in a judicial proceeding, a judgment is rendered by a court of justice affecting the liberty or condemning the property of another person, he is entitled to have reasonable notice of such procedure, trial, or contest." In other words, "due process of law" is a fundamental, constitutional right given to every person, which it is the sworn duty of the courts to honor and protect. Giving to Act No. 3066 its broadest possible construction, we are clearly of the opinion that, as between the City of Manila and the Metropolitan Water District, the Insular Auditor is not vested with judicial powers. By their respective charters, one is a public corporation, and the other is a municipal corporation. The United States is under a Republican form of government in which all powers are vested in the executive, legislative and judiciary, and their respective limits are clearly specified and denned, and as to the question here involved, those

principles are embodied in and made a part of the Jones Law, known as the Organic Act of the Philippine Islands, and of section 17 of the Administrative Code. The answer further alleges that on January 28, 1924, an alleged majority of the Board of Directors of the Metropolitan Water District passed a resolution, exempting the City of Manila from the payment of water consumed by fire and the public hydrants of the city. That an appeal was taken by the minority of the Board to the Governor-General, who reversed the action of the Board, and decided "that the City of Manila shall pay for all services rendered by the Metropolitan Water District." It will be noted that the City of Manila was not a party to that proceeding, and that the only thing which the Board of Directors undertook to do was to exempt the city from the payment of water, and that the action of the Board was reversed by the Governor-General. That was the only question presented on the appeal. It is further alleged that on August 11, 1924, a majority of the Board of Directors of the Water District passed a resolution that the Secretary of the Interior be requested to recommend to the Legislature to amend the Organic Act of the Water District, so as to relieve the City of Manila from such payment, and that upon appeal by the minority of the Board, this action of the Board also was reversed by the Governor-General. That is to say, the Board of Directors of the Metropolitan Water District passed a resolution to have the law amended so as to relieve the city from the payment of water, and the action of the Board was reversed by the Governor-General. No other question was presented to or considered by the Governor-General, and it is not claimed that the city was a party to that proceeding. The Governor-General did nothing more than to say that the Metropolitan Water District had a claim against the city for water which the city ought to pay, and that it ought not to be exempted from liability. No one questions the power or authority of the Governor-General to make either one of those decisions. They were both executive acts. But the question as to whether money may be unlawfully taken out of the government treasury, which belongs to the city, and given to and applied by a public corporation upon the payment of an alleged claim, which it has against the city, and upon which the city denies all liability, or as to whether the city is legally liable, or has a valid defense or counterclaim, is another and a very different question, and one upon which the city has a legal right to be heard and to defend itself. In the final analysis, we have this situation. An attempt was made to take money out of the government treasury, which belongs to the City of Manila, a municipal corporation, and apply it to the payment of a debt which a public corporation claims to have against the city. That proceeding was in direct conflict with three of the express provisions of section 3 of the Jones Law. First, it violates that portion of the section which says that no law shall be enacted "which shall deprive any person of life, liberty, or property without due process of law." The answer does not claim or allege that the city was ever served with any process or that it had notice or was given an opportunity to defend itself before the Insular Auditor rendered his decision. Second, it violates that portion of the section which says: "That no money shall be paid out of the treasury except in pursuance of an appropriation by law." It is not claimed that any appropriation was made by the Government of the city to pay the claim of the Metropolitan Water District against the city, and yet over the vigorous protest and objection of the city, defendants propose to take money out of the government treasury, which belongs to the city, and pay an alleged debt of the Metropolitan Water District against the city. No money can be taken out of the government treasury for any purpose without an appropriation having first been made for that specific purpose. In legal effect that was the decision of this court in *Gotamco vs. Wright*, decided November 5, 1924, and published in 46 Phil., 467, where in an opinion written by Justice Ostrand, it is said: ". * * * Section 3 of the Organic Act expressly provides that 'no money shall be paid out of the Treasury except in pursuance of an appropriation by law.' Neither the Insular Collector of Customs nor any other official of the Government is authorized to order the expenditure of unappropriated funds, * * *." And third, the other provision which says: "That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only." Here, the defendants propose to take public money from and out of the government treasury, which is in a special fund, and which was assessed, levied and collected for a special purpose, and pay it over to a public corporation. In other words, to take money out of the government treasury, which was assessed, levied and collected for the exclusive use and benefit of the City of Manila, a municipal corporation, and pay it to the Metropolitan Water District, which is a public corporation. No authority has been cited, and none will ever be found to legalize such a proceeding. In the recent decision of this court in the case of *Ynchausti & Co. vs. Wright* (47 Phil., 866), it was held that the decisions of the Insular Auditor are final and conclusive only upon the "executive branches of the government." Accepting that as the law of this court, the defendants vigorously contend that the City of Manila is an executive branch of the

government. That position is not tenable. It is true that by the terms of the charter, the Mayor of the City of Manila is the executive officer of the city, and that the Mayor is appointed by the Governor-General. It is also true that by the terms of the charter, the Municipal Board is the legislative body of the city, which consists of ten members, who are elected by a direct vote of the people, and that it is the duty of the Board to elect a president from one of its own members, and that "the president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the Board." That is to say, in the first instance, the power to allow or disallow a claim against the city, like the one in question, is vested in the Municipal Board, and it is elected by a direct vote of the people, and the charter of the City of Manila was granted by the Legislature of the Philippine Islands, and approved by the then Governor-General. If, in the first instance, the power to allow or disallow a claim, like the one in question, was vested in the Mayor, there might be some merit in the Contention, that it would then be an executive act. But that authority is vested in the council, and in such cases, the only power which the Mayor has is that of veto, and the council has the power to overrule his veto. Under the terms and provisions of the charter, the allowance or disallowance of a claim against the city, subject only to a veto, is vested exclusively in the legislative body of the city, which is elected by a direct vote of the people, and, outside of his power of veto, is a matter over which the Mayor has no control. It must follow that under the provisions of the charter of the City of Manila, the allowance or disallowance by the Municipal Board of a claim like the one in question is a legislative act, and that in the doing of such an act, the city would be exercising its legislative powers, and for such reason, and, if it is in any case, in that particular at least, the city is not an executive branch of the government. The city claims and alleges that any title which the Metropolitan Water District may have in or to the water system is held by the Water District in trust and for the use and benefit of the city. That would be an equitable defense and one upon which the city has the right to be heard and to have judicially determined. This is a mandamus proceeding, and it is fundamental that title to property cannot be litigated in this kind of an action. It also appears that any claim which the Water District may have against the city is founded upon a contract express or implied for which mandamus will not lie. Ruling Case Law, vol. 18, p. 129, says: "43. Contract Rights.—Obligations which rest solely upon contract will not be, enforced by mandamus where there is no question of trust or of official duty; it is not the appropriate remedy for the enforcement of private contract rights, * * *." On legal principle, the decision of this court in the case of Quioque vs. Romualdez (46 Phil., 337), is in point. Although the question there presented was "to enforce the performance of a private contract," the opinion written by Justice Street says that mandamus: " * * * never lies where the party aggrieved has adequate remedy at law, and its aid is only to be invoked to prevent an absolute failure of justice in cases where ordinary legal processes furnish no relief. * * * " And quotes with approval from the decision in State ex rel. Bohannon vs. Howard County (39 Mo., 375), where the court says that it would not: " 'Undertake by writ of mandamus to enforce simple common law rights between individuals, such as payment , of money, or where there is another adequate legal remedy. * * *'" And the opinion of Justice Street says: "The authorities, almost without exception, support the doctrine stated in the foregoing cases," citing a number of authorities. It follows that the question as to whether or not the Metropolitan Water District has a valid claim against the City of Manila cannot be litigated in this kind of a proceeding, but assuming that its claim was valid, it would not be a defense to plaintiff's petition. The same thing is true as to the allegation in the petition, that the Metropolitan Water District holds the title to the water system in trust and for the use and benefit of the city. That question cannot be litigated in this action. Hence, the only question now before this court is as to whether the city has a legal right to have the warrants in question issued to and in its favor, and as to whether the acts of the Collector of Internal Revenue and the Insular Auditor, in seeking to pay over the money in question to the Metropolitan Water District are null and void. Based upon the statutory provisions and the admitted facts, we are clearly of the opinion that the warrants in question should be drawn to and in favor of the city, and that it is legally entitled to the possession of the funds, and that the decision of the Insular Auditor to divert the funds to the Metropolitan Water District is null and void and of no legal force and effect. Under their respective charters, both the Metropolitan Water District and the city can sue and be sued. If the Metropolitan Water District has a valid claim against the city, that fact can legally be ascertained and determined in a judicial proceeding for that purpose, and in the same manner as any other disputed claim. If the Water District holds the title to the water system in trust and for the use and benefit of the city, that fact can also be determined in the same way, and the whole question settled. But neither of such questions can be judicially determined in a mandamus

proceeding. Both of those questions will have to be determined in another and a different proceeding, upon proper pleadings, and decided upon the merits, and about which at this time and upon this record, we do not have or express any opinion. Suffice it to say that the City of Manila is solvent and can be made to pay any debt that it legally owes, and that as to the title of the property, the city has ample redress against the Metropolitan Water District. It will be noted that in the answer of the defendants: "They deny, all and singular, the allegations contained in the other paragraphs of the petition, except those that in the following special defense are specifically admitted." That is to say, the answer is in the nature of a general denial, except as to those questions which are alleged and admitted in the "special defense," which is in the nature of a plea of "confession and avoidance." In legal effect, the special defense admits the doing of the things of which the petitioner complains, and in justification alleges how and by whom they were done and the reasons why they were done. The demurrer of the petitioner is upon the ground that the answer does not state facts sufficient to constitute a defense. In its argument on the demurrer, the city says nothing whatever about the general denial in the answer, and confines itself to the matters set forth and alleged in the special defense, from which it is very apparent that it was the purpose and intent of the city to limit its demurrer to the special defense alleged in the answer, and that it should be so construed. Based upon the allegations made in the petition and those made in the special answer, it is the judgment of the court that the demurrer, in so far as it alleges that the answer does not allege facts sufficient to constitute a defense, be sustained as to the special defense plead in the answer, and unless the defendants shall within ten days amend their answer, so as to cure the defects pointed out in this decision, the petition prayed for shall issue as follows: First, that a writ of mandamus shall issue "ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled." Second, that a writ of mandamus shall issue "ordering the respondent Ben F. Wright, Insular Auditor, his deputies, agents, employees or other persons acting in his stead, to countersign and approve any check, warrant or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sum of money as represent its share or allotment in the internal revenue collections and in the special tax imposed by Act. No. 3065." That the temporary injunction heretofore issued by the vacation Justice shall be, and is hereby, made permanent, and in all other respects, the prayer of the petitioner is denied. Neither party to recover costs. So ordered. Avanceña, C. J., Malcolm, Villamor, and Romualdez, JJ., concur. Johnson and Villa-Real, JJ., took no part in the consideration of this case. CONCURRING IN THE RESULT STREET, J.

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STATEMENT

This is an original petition for mandamus, in which it is alleged:

"I. That the petitioner is a municipal corporation organized under the provisions of Chapter 60, Title X, of Act No. 2711 of the Philippine Legislature, known as the Administrative Code, and is empowered to sue and be sued.

"II. That the respondent Juan Posadas, jr., is, and during the period of time mentioned in this petition was, the Collector of Internal Revenue of the Government of the Philippine Islands; the respondents Ben F. Wright and Vicente Carmona are, and during the same period were, the Insular Auditor and Insular Treasurer, respectively, of the Philippine Islands, and the respondent Metropolitan Water District is a public corporation created by Act No. 2832, with powers to sue and be sued.

"III. That the petitioner is entitled to a part and portion, determined by law, of the internal revenue collected by the respondent, the Collector of Internal Revenue (see sec. 488, Adm. Code), as well as to a certain per cent of the one and one-half per cent tax imposed on merchants, manufacturers and commission merchants (see sec. 3, Act No. 3065), and that petitioner's share of said internal revenue and one and one-half per cent tax does not

constitute a credit or debt owing by, and due from, the Insular Government to the petitioner, but is a property of the petitioner, belonging and appertaining to it both as a province and as a municipality of the Philippine Islands (see sec. 495, par. 2, Adm. Code), used and to be used by the petitioner for the purpose of defraying the expenses necessary for its existence and operation.

"IV. That the respondent, the Collector of Internal Revenue, in compliance with his ministerial duty imposed upon him by section 497 of the Administrative Code to pay quarterly to the petitioner, the allotments of said internal revenue and percentage tax belonging to it, has been in the past drawing warrants for said allotments payable to the petitioner; but that from and after the month of January, 1922, the said respondent has ceased to make such payments to the petitioner, and has drawn warrants for such internal revenue and percentage tax allotments belonging to the petitioner, payable to the Metropolitan Water District, a water corporation created by Act No. 2832 of the Philippine Legislature.

"V. That the petitioner is informed, and, therefore, alleges, that the transfer and payment of said allotments of the internal revenue and percentage tax, belonging to the petitioner, to the said Metropolitan Water District has been made by the respondent Collector of Internal Revenue by and under certain instruction of the respondent Insular Auditor, dated January 5, 1922, a certified copy of which is attached hereto and made a part hereof, marked as Exhibit A.

"VI. That the petitioner is also informed, and, therefore, alleges, that the respondent Insular Auditor has instructed his co-respondent Collector of Internal Revenue to pay the said allotments of internal revenue and percentage tax aforementioned, belonging to the petitioner, to the said Metropolitan Water District, instead of the petitioner, for the purpose of setting-off certain alleged debts of the petitioner for alleged water services rendered it by the said Metropolitan Water District."

It is then alleged that upon receipt of such information, the city notified the Collector of Internal Revenue that such proceedings were illegal and void, and that in the future payments should be made to the City of Manila, in accord with the provisions of section 497 of the Administrative Code.

"VIII. That in spite of the letter or communication sent by the petitioner, through its attorney, to the respondent Collector of Internal Revenue, the latter, following instructions of the other respondent, Insular Auditor, informed the petitioner by a communication bearing date of January 5, 1925, which is hereto attached and made a part hereof as Exhibit C, that he would continue making payments of the share belonging to the petitioner of the internal revenue and of the especial tax imposed by Act No. 3065, including that corresponding to the last quarter of the year 1924, in favor of the respondent Metropolitan Water District, and the petitioner believes, and, therefore, alleges that said respondent Collector of Internal Revenue will carry out such threats unless timely prevented from so doing by this Honorable Court.

"IX. That there does not exist between the Metropolitan Water District, which is neither a governmental entity, nor office, nor branch of the Insular Government (see sec. 1, Act No. 2832), and the petitioner City of Manila, any account the settlement of which the respondent Insular Auditor could legally authorize and enforce.

"X. That the petitioner does not owe anything to the Metropolitan Water District by way of alleged water service rendered by said District to said petitioner; and that the latter has up to the present time been questioning the power of said District to render and collect any bill for water supplied to the petitioner.

"XI. That Act No. 2832 does not empower the Metropolitan Water District, either expressly or impliedly or in general terms, to charge for water consumed by the petitioner, from the water system of the City of Manila.

* * * * *

"XIX. That the said Act No. 2832 did not have more object, and in fact, did not do more than to transfer, from the petitioner to the Metropolitan Water District, the possession, administration, control and management of the sewer and water supply systems of the City of Manila, and, to this effect, has provided, in its section 8 that

the said District receive and assume all assets and liabilities together with the bonds sinking funds of said systems, the same as if it were a mere receiver or judicial depository.

* * * * *

"XXI. That as one of the liabilities of the water supply system of the City of Manila, and among the charges, obligations and responsibilities going with said system which constitutes a part of said liabilities, is that of furnishing water free of charge to the petitioner, in its aforesaid capacities as owner and fiduciary, for all its uses and needs.

* * * * *

"XXV. That even supposing that the respondent Insular Auditor is empowered to settle accounts outstanding between the petitioner and the Metropolitan Water District, the said petitioner has up to the present time contested the bills of the latter for alleged water services rendered the petitioner for the reason that the same are not authorized by law, and that said Insular Auditor is not authorized to settle or adjust accounts which, not being based upon any provision of law, are only made so by an erroneous interpretation of the law by said Auditor, by disposing in favor of said District of funds clearly belonging to the petitioner, such as its share in the collections obtained by the enforcement of the internal revenue laws and, of Act No. 3065.

"XXVI. That it is a ministerial duty on the part of the respondent Collector of Internal Revenue to make in favor of the petitioner quarterly allotments of the share of internal revenue collected by him, corresponding to said petitioner, and of its portion of the tax imposed by Act No. 3065. (Sec. 497, Adm. Code.)

"XXVII. That there is no law authorizing the respondent Insular Auditor to prevent his co-respondent Collector of Internal Revenue from complying with his ministerial duty referred to in the next preceding paragraph hereof, or to give the latter instructions to the effect that the abovementioned allotments which, by clear and express provision of law, ought to be made in favor of the petitioner, should be made and paid in the name and in favor of the Metropolitan Water District; nor is said respondent Insular Auditor also authorized by any law to constitute himself a judge and arbiter of disputes regarding the interpretation of laws arising between a municipal corporation and a public corporation which does not belong to the Insular Government or any executive branch of the Government of the Philippine Islands.

* * * * *

"XXX. That the respondent Ben F. Wright, Insular Auditor, is without authority of law to issue a warrant by himself, much less a warrant covering amounts payable and chargeable against the apportionment of the City of Manila in the internal revenue collections and special assessment imposed by Act No. 3065.

"XXXI. That the respondent Vicente Carmona, Insular Treasurer, is likewise without any authority of law to honor, cash or otherwise pay out of the funds belonging to the petitioner as aforesaid, any check, warrant or order of payment issued by the respondent Ben F. Wright, Insular Auditor, or by any other officer, except only after judicial determination of the present controversy.

"XXXII. That to permit such an open violation of the Law by the herein respondents, the aforesaid warrants corresponding to the allotments of funds of internal revenue pertaining to the petitioner, collected during the last quarter of 1924, as well as those which may thereafter be collected and may be payable to said petitioner, would be issued and made payable to the Metropolitan Water District, in violation of the law, and to the serious detriment of the petitioner's interests in particular and of the public interests in general.

"XXXIII. That as a result of the acts of the respondents above related, the petitioner has suffered and will suffer irreparable damages and has encountered and will encounter serious and considerable embarrassments and obstacles in the discharge of its corporate and governmental functions, unless said respondents are immediately restrained and enjoined from such acts by this Honorable Tribunal."

The Metropolitan Water District is made a party defendant, for the reason that it claims to have interests which are adverse to those of the petitioner.

It is then alleged that the city does not have any plain, speedy or adequate remedy in the ordinary course of law.

Under our view of the case, the foregoing allegations are the only ones which are material to this opinion. The complaint, which is quite voluminous, also purports to give a history of the water system of the City of Manila, and alleges in substance that any title to such water system which the Metropolitan Water District may have is held by it in trust and for the use and benefit of the city.

To this petition, a demurrer was filed by the defendants upon the ground that it did not state facts sufficient to constitute a cause of action.

After arguments were heard, and the respective briefs of opposing counsel were submitted, the demurrer of the defendants was overruled, and an answer was filed, in which they deny all of the material allegations of the petition, and as a special defense allege:

"1. That when the water and sewerage system referred to in the petition was under the administration of the sewer and waterworks division of the engineering and public works department of the City of Manila, the other departments of the city paid for water and other services furnished to them by said division;

"2. That the Metropolitan Water District since its organization in the year 1919 up to the present has been furnishing water and rendering water services to the government of the City of Manila;

"3. That the government of the City of Manila has been voluntarily paying to the Metropolitan Water District for some of the water and water services above mentioned in the amounts, for the purposes, and for the period specified in the statement marked Exhibit A attached to this answer and made a part thereof;

"4. That on January 28, 1924, a supposed majority of the Board of Directors of the Metropolitan Water District passed a resolution exempting the government of the City of Manila from fees for the water consumed by the fire and public hydrants installed in said City; but upon appeal duly taken by the minority of said Board to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, the Governor-General in an indorsement dated September 18, 1924, reversed the above resolution of the alleged majority of the Board and decided 'that the City of Manila shall pay for all services rendered by the Metropolitan Water District.' A copy of the correspondence in regard to the above resolution, appeal, and decision, marked Exhibit B is hereto attached and made a part hereof;

"5. That on August 11, 1924, a majority of the Board of Directors of the Metropolitan Water District approved a resolution to the effect that the Secretary of the Interior be 'requested to recommend to the Legislature the amendment of the Organic Act-of the Metropolitan Water District in such a way as to relieve the City of Manila from payment for fire hydrant rentals, and for water and service maintenance charges of public hydrants;' but the minority members of the Board duly appealed from this resolution to the Governor-General, through the Secretary of the Interior, under the provisions of section 4 of Act No. 2832, as amended by section 2 of Act No. 3109, and the Governor-General rendered the same decision mentioned in the next preceding paragraph. A copy of the correspondence referring to this matter, marked Exhibit C, is hereto attached and made a part hereof;"

It is then alleged that on November 17, 1924, the Board. of Directors of the Metropolitan Water District unanimously approved Resolution No. 21, entitled "A resolution to fix charges, and the rates thereof, for all services rendered by the Metropolitan Water District," in and by which all consumers of water were to be charged uniform rates.

"7. That the Metropolitan Water District has been sending bills to the government of the City of Manila for the

collection of the value of the water and water services which it had been furnishing to said city; but while said government has been paying some of those bills it has refused to pay others;

"8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066;

"9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper;

"10. That the Insular Auditor then made demand on the City of Manila for the payment and settlement of said claim, advising said city that, upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code, as amended by section 1 of Act No. 3066, but the city refused to comply with said demand;

"11. That thereupon the Insular Auditor instructed the Collector of Internal Revenue that thereafter and until further notice, all warrants covering the internal revenue collections allotted to the City of Manila be drawn by said Collector in favor of the Metropolitan Water District instead of said city as theretofore;

"12. That by virtue of an arrangement between the Insular Auditor and the Collector of Internal Revenue for the purpose of putting the present question to a test, the latter officer issued warrant No. 636, dated December 9, 1924, for the sum of P21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of P3,856.04, both covering the internal revenue allotment of the City of Manila, in favor of said city instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue;

"13. That on January 5, 1925, the Collector of Internal Revenue, in answer to a communication from the City Fiscal, advised the latter that pursuant to subsequent instructions from the Insular Auditor, he would, within ten days from said date, proceed to issue the warrants for the abovementioned sums, in favor of the Metropolitan Water District, but due to the preliminary injunction issued in the present case the Collector of Internal Revenue was prevented from doing so."

To this answer, the petitioner filed a demurrer upon the ground, first, that the answer does not state facts sufficient to constitute a defense, and, second, that the answer is ambiguous, unintelligible and uncertain.

Hence, the only question now before this court is whether or not the facts alleged in the special defense constitute a defense to plaintiff's cause of action.

JOHNS, J.:

Section 2427 of the Administrative Code says:

"This chapter shall be known as the Charter of the City of Manila."

Section 2428 provides:

"The City of Manila constitutes a political body corporate and as such is endowed with the attribute of perpetual succession and possessed of the powers which pertain to a municipal corporation, to be exercised in conformity with the provisions of this charter."

Section 2429 provides:

"The city may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold,

lease, convey, and dispose of real and personal property for the general interests of the city, condemn private property for public use, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution, and exercise all the powers hereinafter conferred."

Section 2434, as amended by Act No. 2774, provides:

"The Mayor shall be the chief executive of the city, and as such, shall have immediate control over the executive functions of the different departments, subject to the authority and supervision of the Secretary of the Interior.

"The Mayor shall be appointed by the Governor-General with the consent of the Senate, shall hold office for three years unless sooner removed, * * *."

Section 2439 provides:

"The Municipal Board shall be the legislative body of the city, and shall consist of ten elective members who shall hold office for four years or until their successors are elected and qualified. The members of the Board shall elect each year from among their number a president, who for one year shall preside at all meetings of the Board at which he is present. In his absence, the Board shall elect one of its members as temporary presiding officer. The president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the board."

This was amended so as to make the terms of office of the members of the Board for a period of three years.

Section 2440 provides:

"The members of the Municipal Board shall be elected at large from the entire city, and each of them at the time of his election shall be a resident for at least one year, and a qualified elector, of his assembly district, and not less than twenty-three years of age. * * *"

Section 2442 provides:

"The Board shall make all appropriations for the expenses of the government of the city. * * *"

Section 2444, as amended by Act No. 2774, specifies and defines the "General powers and duties of the Board," which are very broad and comprehensive, and covers all matters which are necessary and material to the administration of a government by the city.

Subsection (u) of that section provides:

"For the laying out, construction, and improvement, and to regulate the use, of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places; * * *" and subsection, (x) provides:

"For the maintenance of waterworks for the purpose of supplying water to the inhabitants of the city, and for the purification of the source of supply and the places through which the same passes, and to regulate the consumption and use of the water; to fix and provide for the collection of rents therefore; and to regulate the construction, repair, and use of hydrants, pumps, cisterns, and reservoirs."

Section 2465, as amended by Acts Nos. 3043 and 3169, provides:

"The law department shall consist of the fiscal of the city and of seven assistants, who shall discharge their duties under the general supervision of the Attorney-General. The fiscal of the city shall be the chief legal adviser of the city and all offices and departments thereof; shall represent the city in all civil cases wherein the city or any officer thereof in his official capacity is a party; * * *."

Section 2468 provides:

"The municipal court shall have territorial jurisdiction embracing the entire police jurisdiction of the city, * *

*."

It will thus be seen that under the terms and provisions of its charter, the City of Manila has both executive, legislative and judicial powers, and that all of such powers are vested and conferred by an Act of the Legislature of the Philippine Islands.

Section 3 of the Organic Act or what is known as the Jones Law says:

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. * * *

"That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

* * * * *

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

Section 8 provides:

"That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

Section 490 of the Administrative Code says:

"Disposition of internal revenue in general.—Internal revenue collected under the laws of the Philippine Islands and not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section."

Section 491 provides:

"Allotments of internal revenue for special purposes.—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road and bridge allotment, and twenty per centum as a municipal allotment; but the amounts allotted to said several purposes during any year shall not be greater than the amount allotted for the same purposes during the fiscal year nineteen hundred and nine."

Section 492 provides:

"Apportionment and use of provincial allotment.—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively."

Section 494 provides:

"Apportionment and use of municipal allotment.—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided."

Section 495 provides:

"The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other."

Section 497 provides:

"Warrants for quarterly payment of allotments.—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue."

It appears from the answer of the defendants that under the terms and provisions of said section 497, the Collector of Internal Revenue: "Issued warrant No. 636, dated December 9, 1924, for the sum of P21,880.57 and warrant No. 638, dated December 23, 1924, for the sum of P3,856.04, both covering the internal revenue allotment of the City of Manila, in favor of said City instead of the Metropolitan Water District, and the Insular Auditor, pursuant to the same arrangement, refused to countersign said warrants and returned them, unsigned by him, to the Collector of Internal Revenue."

That is to say, such warrants represent the amount which the city should receive as its allotment from and out of the "internal revenues collected under the laws of the Philippine Islands," and that fact is admitted by defendants' answer. This money is to be paid to the city from and out of the public revenues of the Government, and it is public money, which has been assessed, levied and collected by the Government for governmental purposes, and the law says that the City of Manila shall have and receive twenty per centum of such money as a municipal allotment, and it also says that it shall receive that money quarterly "upon warrants drawn by the Collector of Internal Revenue." When the money was assessed, levied and collected, in so far as the City of Manila is concerned, it was assessed, levied and collected for a specific purpose, and for such reason, it should "be treated as a special fund in the treasury and paid out for such purpose only." The money was public money in the Treasury of the Government, and it was there held in trust for the sole use and benefit of the city.

The Jones Law further provides:

"That no money shall be paid out of the Treasury except in pursuance of an appropriation by law." (Sec. 3.) And in this instance, an appropriation could only be made by the Legislature of the Philippine Islands or the legislative body of the City of Manila.

There is no claim or pretense that any appropriation has ever been made out of the public funds to pay the claim of the Metropolitan Water District against the City of Manila, and yet in legal effect the defendants seek to take money out of the Treasury of the Philippine Islands which belongs to the Treasury of the City of Manila, and to pay the private debt which the Metropolitan Water District claims to have against the City of Manila. The City of Manila has no authority to pay any debt against it, "except in pursuance of an appropriation by law." Neither has any person any authority to take money out of the Treasury of the Government for any purpose, "except in pursuance of an appropriation by law," and there is no claim or pretense that any appropriation was ever made by the Government or the City of Manila to pay the claim of the Metropolitan Water District against the City of Manila.

In the case of *Reeside vs. Walker*, Secretary of the Treasury of the United States (52 U. S., 271), the Supreme Court of the United States says:

"Where the United States were the plaintiffs, and a verdict was rendered that they were indebted to the defendant, and an application was made for a mandamus to compel the Secretary of the Treasury to credit the defendant upon the books of the Treasury with the amount of the verdict, and to pay the same, the mandamus was properly refused by the Circuit Court. For a mandamus will only lie against a ministerial officer to do some ministerial act where the laws require him to do it and he improperly refuses to do so.

"Besides, there was no appropriation made by law, and no officer of the government can pay a debt due by the United States without an appropriation by Congress." And on page 290, the opinion says:

"No officer, however high, not even the President, much less a Secretary of the Treasury, or Treasurer, is empowered to pay debts of the United States generally, when presented to them. If, therefore, the petition in this case was allowed so far as to order the verdict against the United States to be entered on the books of the Treasury Department, the plaintiff would be as far from having a claim on the Secretary or Treasurer to pay it as now. The difficulty in the way is the want of any appropriation by Congress to pay this claim. It is a well-known constitutional provision, that no money can be taken or drawn from the Treasury except under an appropriation by Congress. (See Constitution, art. 1, sec. 9 [1 Stat. at L., 15].)

"However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of anything not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion."

As stated, the City of Manila is a municipal corporation with broad and general legislative powers given to it by the Legislature.

The Metropolitan Water District was also created by Act No. 2832 of the Legislature, and is entitled:

"An Act creating a public corporation denominated the Metropolitan Water District, prescribing its functions and activities, and for other purposes."

Section 2 provides:

"Powers and general functions of the District.—The powers, functions, and activities of the Metropolitan Water District of Manila shall be the following:

"(a) To have continuous succession under its corporate name until otherwise provided by law;

"(b) To prescribe its by-laws;

"(c) To adopt and use a seal and alter it at its pleasure;

"(d) To sue and be sued in any court;

"(e) To construct, maintain, and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of the District, both for domestic and other purposes; to purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix and provide for the collections of rents therefor; etc."

Section 3 provides (as amended by Act No. 3109):

"District Board; its members, reports to the Department of the Interior.—Unless otherwise provided by law, all corporate powers of the Metropolitan Water District shall be exercised, its business managed, and its property kept and preserved, by a Board to be composed of the Mayor of the City of Manila, the President of the Municipal Board of the City of Manila, the governor of the Province of Rizal, the Director of Public Works or his representative, the engineer of the City of Manila, the city treasurer, and a taxpayer of the district, being a resident of the City of Manila, appointed by the Governor-General, with the consent of the Senate."

Section 8 provides:

"Assets and liabilities of the Manila water and sewer system; their transfer to the District; sinking fund and Government guaranty.—The District Board is hereby authorized and directed to receive and assume on behalf of the Metropolitan Water District all assets and liabilities pertaining to the sewerage and waterworks system of the City of Manila, together with the sewerage and waterworks bonds sinking funds, and of all the indebtedness in general of the present sewer and water system of the City of Manila, and in turn to pledge such assets as security for the payment of the sewerage and waterworks bonded debt thus acquired."

Section 10 provides:

"Powers reserved to the Legislature.—This Act or any part thereof may be amended or repealed at any date by legislative authority, and the Metropolitan Water District may be reorganized or dissolved by legislative provision."

That is to say, the City of Manila is a municipal corporation, deriving all of its powers from the legislature, and the Metropolitan Water District is a public corporation, as distinguished from a municipal corporation, and derives all of its powers from the Legislature. The City of Manila derives all of its revenues from public funds in the nature of fines, licenses and taxes assessed, levied and collected for its maintenance. The Metropolitan Water District derives all of its revenues from private sources and monies which it collects from consumers of its waters.

Under the facts alleged in the answer, the defendants undertook to take the money out of the Government Treasury which belongs to the city and use it to pay a disputed claim of a public corporation against the city over the vigorous protest of the city.

Assuming all of such facts to be true, the answer alleges as a defense:

"8. That the Metropolitan Water District advised the Insular Auditor of the refusal of the government of the City of Manila to pay the above-mentioned bills, requesting the latter to enforce the adjustment and settlement of said outstanding accounts under the provisions of section 588 of the Administrative Code, as amended by Act No. 3066."

Section 588 of the Administrative Code, as amended by Act No. 3066, provides:

"Authority of auditor in adjustment of accounts between offices.—The Insular Auditor shall have the power, subject to such regulations as may be prescribed therefor, to authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

Act No. 3066 is entitled "An Act to amend certain sections of the Administrative Code, and for other purposes."

Section 584 of the Administrative Code, as amended by Act No. 3066, provides:

"General jurisdiction of Bureau of Audits.—The authority and powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records, and papers relating to such accounts, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches. The said jurisdiction shall also extend to all corporations established and organized in accordance with the laws of the Philippine Islands wherein the Government of the said Islands or any of its branches owns the majority of the stock. * * *."

Section 593, as amended by the same Act, provides:

"Auditing districts; assignment and compensation of district auditors.—The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts, * * *." These twenty-three districts are grouped into four divisions.

There is nothing in any of these provisions which would authorize or justify the Insular Auditor to compel a municipal corporation to pay a claim to a public corporation where the city disputes the claim.

The question involved between the city and the Metropolitan Water District is not one of an accounting. There is no pretense that the City of Manila has any claim of any kind against the Metropolitan Water District, and the only claim which the Metropolitan Water District has against the city is for the use of water, and the city disputes the validity of the claim.

Hence, the question involved between the city and the Metropolitan Water District is one of legal liability, and of legal liability only.

The answer further alleges as a defense:

"9. That the Insular Auditor, after due study of the above claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that said claim was just, legal, and proper."

That defense is based on the assumption that the Auditor has judicial powers, and yet there is no claim or pretense that any hearing was ever had or that any process was ever served on the city, or that it ever had any previous notice of the proceeding, or that it was given an opportunity to defend, and yet the record shows that the Auditor knew that the city denied any liability.

In defining what is "due process of law," Words and Phrases, vol. 3, says:

Page 2227:

"The principle that no man shall be deprived of his liberty or property except by the 'law of the land,' or its synonym, 'due process of law,' is older than written constitutions—older even than Runnymede—and breathes so palpably of exact justice that it needs no formulation in the organic law. * * *"

Page 2230:

" 'Due process of law' is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the process be judicial or administrative or executive in its nature.

" 'Due process of law,' in its constitutional meaning, includes administrative process of the customary sort, as well as judicial process."

Page 2238:

" 'To give the clause of the Constitution which guaranties that "no person shall be deprived of life, liberty, or property without due process of law," therefore, any value, it must be understood to mean that no person shall be deprived by any form of legislation or governmental action of either life, liberty, or property, except as the consequence of some judicial proceeding, appropriately and legally conducted. It shows that a law which by its own inherent force extinguishes rights of property, or compels their extinction, without any legal process whatever, comes directly in conflict with the Constitution.' "

Page 2243:

"'Due process of law' implies that whenever, in a judicial proceeding, a judgment is rendered by a court of justice affecting the liberty or condemning the property of another person, he is entitled to have reasonable notice of such procedure, trial, or contest."

In other words, "due process of law" is a fundamental, constitutional right given to every person, which it is the sworn duty of the courts to honor and protect.

Giving to Act No. 3066 its broadest possible construction, we are clearly of the opinion that, as between the City of Manila and the Metropolitan Water District, the Insular Auditor is not vested with judicial powers. By their

respective charters, one is a public corporation, and the other is a municipal corporation.

The United States is under a Republican form of government in which all powers are vested in the executive, legislative and judiciary, and their respective limits are clearly specified and denned, and as to the question here involved, those principles are embodied in and made a part of the Jones Law, known as the Organic Act of the Philippine Islands, and of section 17 of the Administrative Code.

The answer further alleges that on January 28, 1924, an alleged majority of the Board of Directors of the Metropolitan Water District passed a resolution, exempting the City of Manila from the payment of water consumed by fire and the public hydrants of the city. That an appeal was taken by the minority of the Board to the Governor-General, who reversed the action of the Board, and decided "that the City of Manila shall pay for all services rendered by the Metropolitan Water District."

It will be noted that the City of Manila was not a party to that proceeding, and that the only thing which the Board of Directors undertook to do was to exempt the city from the payment of water, and that the action of the Board was reversed by the Governor-General. That was the only question presented on the appeal.

It is further alleged that on August 11, 1924, a majority of the Board of Directors of the Water District passed a resolution that the Secretary of the Interior be requested to recommend to the Legislature to amend the Organic Act of the Water District, so as to relieve the City of Manila from such payment, and that upon appeal by the minority of the Board, this action of the Board also was reversed by the Governor-General. That is to say, the Board of Directors of the Metropolitan Water District passed a resolution to have the law amended so as to relieve the city from the payment of water, and the action of the Board was reversed by the Governor-General. No other question was presented to or considered by the Governor-General, and it is not claimed that the city was a party to that proceeding. The Governor-General did nothing more than to say that the Metropolitan Water District had a claim against the city for water which the city ought to pay, and that it ought not to be exempted from liability.

No one questions the power or authority of the Governor-General to make either one of those decisions. They were both executive acts. But the question as to whether money may be unlawfully taken out of the government treasury, which belongs to the city, and given to and applied by a public corporation upon the payment of an alleged claim, which it has against the city, and upon which the city denies all liability, or as to whether the city is legally liable, or has a valid defense or counterclaim, is another and a very different question, and one upon which the city has a legal right to be heard and to defend itself.

In the final analysis, we have this situation. An attempt was made to take money out of the government treasury, which belongs to the City of Manila, a municipal corporation, and apply it to the payment of a debt which a public corporation claims to have against the city. That proceeding was in direct conflict with three of the express provisions of section 3 of the Jones Law.

First, it violates that portion of the section which says that no law shall be enacted "which shall deprive any person of life, liberty, or property without due process of law."

The answer does not claim or allege that the city was ever served with any process or that it had notice or was given an opportunity to defend itself before the Insular Auditor rendered his decision.

Second, it violates that portion of the section which says:

"That no money shall be paid out of the treasury except in pursuance of an appropriation by law."

It is not claimed that any appropriation was made by the Government of the city to pay the claim of the Metropolitan Water District against the city, and yet over the vigorous protest and objection of the city,

defendants propose to take money out of the government treasury, which belongs to the city, and pay an alleged debt of the Metropolitan Water District against the city. No money can be taken out of the government treasury for any purpose without an appropriation having first been made for that specific purpose. In legal effect that was the decision of this court in *Gotamco vs. Wright*, decided November 5, 1924, and published in 46 Phil., 467, where in an opinion written by Justice Ostrand, it is said:

"* * * Section 3 of the Organic Act expressly provides that 'no money shall be paid out of the Treasury except in pursuance of an appropriation by law.' Neither the Insular Collector of Customs nor any other official of the Government is authorized to order the expenditure of unappropriated funds, * * *."

And third, the other provision which says:

"That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

Here, the defendants propose to take public money from and out of the government treasury, which is in a special fund, and which was assessed, levied and collected for a special purpose, and pay it over to a public corporation. In other words, to take money out of the government treasury, which was assessed, levied and collected for the exclusive use and benefit of the City of Manila, a municipal corporation, and pay it to the Metropolitan Water District, which is a public corporation.

No authority has been cited, and none will ever be found to legalize such a proceeding.

In the recent decision of this court in the case of *Ynchausti & Co. vs. Wright* (47 Phil., 866), it was held that the decisions of the Insular Auditor are final and conclusive only upon the "executive branches of the government."

Accepting that as the law of this court, the defendants vigorously contend that the City of Manila is an executive branch of the government. That position is not tenable. It is true that by the terms of the charter, the Mayor of the City of Manila is the executive officer of the city, and that the Mayor is appointed by the Governor-General. It is also true that by the terms of the charter, the Municipal Board is the legislative body of the city, which consists of ten members, who are elected by a direct vote of the people, and that it is the duty of the Board to elect a president from one of its own members, and that "the president shall sign all ordinances, and all resolutions and motions directing the payment of money or creating liability, enacted or adopted by the Board." That is to say, in the first instance, the power to allow or disallow a claim against the city, like the one in question, is vested in the Municipal Board, and it is elected by a direct vote of the people, and the charter of the City of Manila was granted by the Legislature of the Philippine Islands, and approved by the then Governor-General.

If, in the first instance, the power to allow or disallow a claim, like the one in question, was vested in the Mayor, there might be some merit in the Contention, that it would then be an executive act. But that authority is vested in the council, and in such cases, the only power which the Mayor has is that of veto, and the council has the power to overrule his veto. Under the terms and provisions of the charter, the allowance or disallowance of a claim against the city, subject only to a veto, is vested exclusively in the legislative body of the city, which is elected by a direct vote of the people, and, outside of his power of veto, is a matter over which the Mayor has no control.

It must follow that under the provisions of the charter of the City of Manila, the allowance or disallowance by the Municipal Board of a claim like the one in question is a legislative act, and that in the doing of such an act, the city would be exercising its legislative powers, and for such reason, and, if it is in any case, in that particular at least, the city is not an executive branch of the government.

The city claims and alleges that any title which the Metropolitan Water District may have in or to the water system is held by the Water District in trust and for the use and benefit of the city. That would be an equitable

defense and one upon which the city has the right to be heard and to have judicially determined.

This is a mandamus proceeding, and it is fundamental that title to property cannot be litigated in this kind of an action. It also appears that any claim which the Water District may have against the city is founded upon a contract express or implied for which mandamus will not lie.

Ruling Case Law, vol. 18, p. 129, says:

"43. Contract Rights.—Obligations which rest solely upon contract will not be, enforced by mandamus where there is no question of trust or of official duty; it is not the appropriate remedy for the enforcement of private contract rights, * * *."

On legal principle, the decision of this court in the case of *Quiogue vs. Romualdez* (46 Phil., 337), is in point. Although the question there presented was "to enforce the performance of a private contract," the opinion written by Justice Street says that mandamus:

" * * * never lies where the party aggrieved has adequate remedy at law, and its aid is only to be invoked to prevent an absolute failure of justice in cases where ordinary legal processes furnish no relief. * * * " And quotes with approval from the decision in *State ex rel. Bohannon vs. Howard County* (39 Mo., 375), where the court says that it would not:

" Undertake by writ of mandamus to enforce simple common law rights between individuals, such as payment , of money, or where there is another adequate legal remedy. * * * " And the opinion of Justice Street says:

"The authorities, almost without exception, support the doctrine stated in the foregoing cases," citing a number of authorities.

It follows that the question as to whether or not the Metropolitan Water District has a valid claim against the City of Manila cannot be litigated in this kind of a proceeding, but assuming that its claim was valid, it would not be a defense to plaintiff's petition. The same thing is true as to the allegation in the petition, that the Metropolitan Water District holds the title to the water system in trust and for the use and benefit of the city. That question cannot be litigated in this action.

Hence, the only question now before this court is as to whether the city has a legal right to have the warrants in question issued to and in its favor, and as to whether the acts of the Collector of Internal Revenue and the Insular Auditor, in seeking to pay over the money in question to the Metropolitan Water District are null and void.

Based upon the statutory provisions and the admitted facts, we are clearly of the opinion that the warrants in question should be drawn to and in favor of the city, and that it is legally entitled to the possession of the funds, and that the decision of the Insular Auditor to divert the funds to the Metropolitan Water District is null and void and of no legal force and effect.

Under their respective charters, both the Metropolitan Water District and the city can sue and be sued. If the Metropolitan Water District has a valid claim against the city, that fact can legally be ascertained and determined in a judicial proceeding for that purpose, and in the same manner as any other disputed claim. If the Water District holds the title to the water system in trust and for the use and benefit of the city, that fact can also be determined in the same way, and the whole question settled. But neither of such questions can be judicially determined in a mandamus proceeding. Both of those questions will have to be determined in another arid a different proceeding, upon proper pleadings, and decided upon the merits, and about which at this time and upon this record, we do not have or express any opinion.

Suffice it to say that the City of Manila is solvent and can be made to pay any debt that it legally owes, and that as

to the title of the property, the city has ample redress against the Metropolitan Water District.

It will be noted that in the answer of the defendants:

"They deny, all and singular, the allegations contained in the other paragraphs of the petition, except those that in the following special defense are specifically admitted." That is to say, the answer is in the nature of a general denial, except as to those questions which are alleged and admitted in the "special defense," which is in the nature of a plea of "confession and avoidance." In legal effect, the special defense admits the doing of the things of which the petitioner complains, and in justification alleges how and by whom they were done and the reasons why they were done.

The demurrer of the petitioner is upon the ground that the answer does not state facts sufficient to constitute a defense.

In its argument on the demurrer, the city says nothing whatever about the general denial in the answer, and confines itself to the matters set forth and alleged in the special defense, from which it is very apparent that it was the purpose and intent of the city to limit its demurrer to the special defense alleged in the answer, and that it should be so construed.

Based upon the allegations made in the petition and those made in the special answer, it is the judgment of the court that the demurrer, in so far as it alleges that the answer does not allege facts sufficient to constitute a defense, be sustained as to the special defense plead in the answer, and unless the defendants shall within ten days amend their answer, so as to cure the defects pointed out in this decision, the petition prayed for shall issue as follows:

First, that a writ of mandamus shall issue "ordering the respondent Collector of Internal Revenue to issue in favor of the petitioner, and not to the Metropolitan Water District, all the warrants which he ought to issue for the share of the petitioner in the internal revenue collections and in whatever other fiscal collections to which said petitioner is, by law, entitled."

Second, that a writ of mandamus shall issue "ordering the respondent Ben F. Wright, Insular Auditor, his deputies, agents, employees or other persons acting in his stead, to countersign and approve any check, warrant or order of payment which the respondent Collector of Internal Revenue may issue in favor of the petitioner for such sum of money as represent its share or allotment in the internal revenue collections and in the special tax imposed by Act. No. 3065."

That the temporary injunction heretofore issued by the vacation Justice shall be, and is hereby, made permanent, and in all other respects, the prayer of the petitioner is denied. Neither party to recover costs. So ordered.

Avanceña, C. J., Malcolm, Villamor, and Romualdez, JJ., concur.

Johnson and Villa-Real, JJ., took no part in the consideration of this case.

CONCURRING IN THE RESULT

STREET, J.:

As a matter of practice I should have preferred to overrule the demurrer to the answer, requiring the parties to submit the cause on an agreed statements of fact or upon such proof as they might have seen fit to adduce before our commissioner. The majority, however, find sufficient admissions in the answer to define the issues; and as the

parties may be supposed to be desirous of having the case settled speedily on the merits, I waive my views on this point.

Confining myself to the principal features of the case, I will say that the so-called "special defense" contained in the answer and the accompanying exhibits show in my opinion that the City of Manila is liable for the value of the water supplied to it by the Metropolitan Water District for use in fighting fires and sprinkling streets. All administrative officials, whether supporters of the city in the present contention or not, have so assumed; and this is in conformity with justice and the letter of the law. I am further of the opinion that the administrative authority of the Auditor over the Metropolitan Water District is coextensive with his authority over the city and other branches of the public service; and he has the same power to enforce the settlement of accounts with respect to this entity as he has with respect to provinces and chartered cities. It seems to me, however,—and upon this decisive point I concur with the majority,—that the power to enforce the settlement of accounts does not include the power to divert funds from the city treasury in the manner now threatened. The Insular Auditor certainly does not have the power to put his hands into the city treasury and take out money to pay its debts however meritorious the obligation; and if he does not have this power he cannot intercept and divert funds in course of transmission to the city. Lastly, it is my opinion that the provision of section 3 of the Jones Law which declares that the money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only is not pertinent to the case, since the money with which we are now dealing was not levied or assessed for a special purpose. The revenue allotments are taken from the general fund in the Insular Treasury, collected under general laws; and said allotments accrue to the general funds of the city, except as to one-half of the municipal allotment, which is applied by law to the school fund of the city. (See secs. 490, 492, 494, Admin. Code.) Of course this part of the allotment to the city could not in any event be diverted by the Insular Auditor to the payment of the city's indebtedness to the Metropolitan Water District.

DISSENTING

OSTRAND, J.:

I dissent. In my humble judgment the court has exceeded its jurisdiction in ordering the issuance of the writ of mandamus to the Insular Auditor upon the facts shown by the pleadings.

The Organic Act (Act of Congress of August 29, 1916, the so-called Jones Law) gives the Insular Auditor extensive powers, some of them of a judicial character. Section 24 of the Act provides that he "shall examine, audit and settle all accounts pertaining to revenues and receipts" of the Philippine Government and of the provincial and municipal governments. Section 588 of the Administrative Code, as amended by Act No. 3066, provides that he shall have the power to enforce the settlement of "accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city governments; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

Section 24 of the Organic Act also empowers the Auditor to summon "witnesses, administer oaths, and to take evidence, and, in the pursuance of these provisions may issue subpoenas and enforce the attendance of witnesses." The same section, in connection with section 25 of the Act, provides that the Auditor's decisions "shall be final and conclusive upon the executive branches of the Government" subject to an appeal to the Governor-General. (The difference in language between this provision and the corresponding statutory provisions with reference to

the powers of Auditors in the United States, is not without significance: here, the statute speaks of the decisions of the Auditor; there, it is provided that the balances which may from time to time be certified by Auditors * * * shall be final and conclusive upon the executive branch of the Government * * *.)

It must be borne in mind that the jurisdiction of territorial courts is not specifically determined by the United States Constitution and that Congress, therefore, in the exercise of its plenary power to provide for the government of territories, may lawfully impose limitations upon the jurisdiction of the Philippine judiciary and if it so sees fit, may invest executive officers with judicial functions and place corresponding limitations on the jurisdiction of the ordinary courts. This being true, there can, of course, be no question as to the constitutionality of the provision last quoted from the Organic Act and that it must be given full force and effect. It is so clear and positive as to admit of no special interpretation and must be taken to mean exactly what it says, namely, that the Insular Auditor is vested with final and conclusive jurisdiction over questions of accounting between two or more executive branches of the Government, subject only to the right of appeal to the Governor-General. It follows that once the Insular Auditor has taken jurisdiction over a matter of that character, the ordinary courts cannot interfere, at least not until the remedy by appeal to the Governor-General is exhausted.

It is suggested in the decision of the court (1) that neither the City of Manila nor the Metropolitan Water District are executive branches of the Government, and (2) that the subject matter of the controversy is not an account within the meaning of section 24 of the Organic Act and the Accounting Act by the Philippine Islands. Neither one of these contentions can, in my opinion, be sustained. It is true that the City of Manila, as a chartered city, has certain delegated legislative powers, but so have the ordinary municipal and provincial governments and there can be no question that the handling of funds and matters of accounting are executive functions, and that in regard to such matters the city, as an agency of the Government, must be considered a branch of the Executive Department. Moreover, for administrative purposes the city is under the direct supervision of one of the executive departments, the Department of the Interior. It is further, to be noted that both the City of Manila and the Metropolitan Water District are, in their relation to the Insular Auditor, made executive branches of the Government by the provision of section 593 of the Administrative Code, as amended by Act No. 3066.

It is true that in its charter, the Metropolitan Water District is styled a public corporation and in a certain sense so it is. But it is more than an ordinary public corporation; it is also an agency of the Government and vested with governmental powers. In common with a municipal corporation it has no stock and it is the successor of the City of Manila in the administration of the water and sewer system by the same right as that which made the chartered City of Manila the successor of the old Ayuntamiento. Section 3 of Act No. 2832 as amended provides that certain officers of the Insular Government and of the City of Manila, together with a resident tax payer to be appointed by the Governor-General, shall compose the District Board, the governing body. All this indicates that the corporation is a branch of the Government. By section 2 (f) of Act No. 2832 it is empowered "to construct, maintain, and operate such systems of sanitary sewers as may be necessary for the proper sanitation of the District;" this must be considered a governmental function. It is also empowered to enact such regulations as may be necessary for the sanitary protection of the watershed, reservoirs and water mains, and for the proper operation of the sanitary sewers, and to fix penalties for the violation of the regulations thus enacted (section 2 [Z] of Act No. 2832). Certainly the power to enact coercive regulations and to provide and impose penalties is a governmental function and a prerogative or attribute of the State.

It is further to be noted that the corporation is by law placed under the control, direction and general supervision of the Secretary of the Interior; that its employees are all under the civil service regulations; and that all of its accounts are audited by the Insular Auditor. As already stated, in its relations to the Insular Auditor it is also made an executive branch of the Government by section 593 of the Administrative Code as amended. In these

circumstances it can hardly be seriously contended that it is not a branch of the Government or a governmental agency.

Neither will the assertion that the claim of the Metropolitan Water District against the city is not an account survive an examination. In its ordinary acceptation the word "account" denotes a statement of debits and credits. The number of items in the statement does not affect its character as an account. Bouvier, citing authorities, says:

"An open account is one in which some term of the contract is not settled by the parties, whether the account consists of one item or many."

The fact that all the credit items are in favor of the party who presents the statements is immaterial; accounts need not necessarily be mutual. In the language of the court in the case of *Donley vs. Bailey* (48 Colo., 373):

"The word 'account' has various meanings and is used in a variety of ways and senses * * *. An account arises out of contract or some fiduciary relation. Its ordinary commercial usage is to refer to a claim or demand growing out of the sale of goods, performance of services and the like. When used alone, without words of limitation, extension, qualification or explanation, it is sometimes equivalent to the word 'claim' or 'demand,' when referring to an indebtedness arising but of contract or some fiduciary relation". (Citing *Morrisette vs. Wood*, 128 Ala., 505; *Southern Kan. Ry. Co. vs. Gould*, 44 Kan., 68.)

In this case we have the following situation: The Metropolitan Water District has rendered certain services to the city for the benefit of its inhabitants; the city has accepted the services and its liability, if any, to pay for them is necessarily founded upon an implied contract. The Water District has from time to time presented its statements of the services and charges to the city and for auditing purposes these statements, arising, as they do, out of an implied contract, are, accounts. It is to be observed that the city does not dispute the correctness of the statements, but simply denies in toto its liability to pay for services received. But the fact that the party to whom an account is rendered denies his liability for items arising out of a contract express or implied, does not affect the character of the account as such; it is precisely in regard to disputed items that the judicial or quasi-judicial functions of the Insular Auditor are exercised. I am not here speaking of items involving claims for damages or other matters arising ex delicto.

As far as I can see there can therefore be no question that for accounting purposes the Insular Auditor had original and the Governor-General appellate jurisdiction over the matter here in controversy. By holding that the courts may intervene before the Governor-General has had an opportunity to pass upon the decision or ruling of the Auditor, this court virtually deprives him of his appellate jurisdiction and it seems to me that the principle announced by the United States Supreme Court in the case of *Baltimore & Ohio Railroad Company vs. United States of America ex rel. Pitcairn Coal Co.* (215 U. S., 481), is fully applicable to the present case. That case involved a question of alleged unjust discrimination in the distribution of coal cars by the railroad company, a matter within the administrative jurisdiction of the Interstate Commerce Commission. Instead of going to the Interstate Commerce Commission, the complainant, the Pitcairn Coal Co., filed a petition in mandamus in the United States Circuit Court for the District of Maryland. That court granted the petition and ordered the issuance of the writ in reliance on section 10 of Act of Congress of March 2, 1889, which reads as follows:

"Sec. 10. That the circuit and district courts of the United States shall have jurisdiction, upon the relation of any person or persons, firm or corporation, alleging such violation by a common carrier of any of the provisions of the act of which this is a supplement, and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given, by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party

applying for the writ: Provided, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: Provided, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement."

Upon appeal, the Supreme Court reversed the decision of the Circuit Court and held that the courts could not interfere by writ of mandamus until after the matter in controversy had been acted on by the Interstate Commerce Commission. Speaking through Chief Justice White, the Court said:

"* * * When the situation is thus defined we see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission, and not subject to be judicially enforced; at least, until that body, clothed by the statute with authority on the subject, had been afforded, by a complaint made to it, the opportunity to exert its administrative functions."

The practical considerations informing the decision in the *Pitcairn Coal Co.* case exist to an equal extent in the present case. It is further to be observed that in the former case the courts were expressly authorized by law to issue writs of mandamus to common carriers in matters falling within the administrative jurisdiction of the Interstate Commerce Commission; here, the Insular Auditor and the Governor-General are by Act of Congress expressly given exclusive and conclusive jurisdiction over accounts between the various branches of the Government, which, as we have seen, includes the Metropolitan Water District as well as the City of Manila. In this respect, at least, this case is more favorable to the respondents.

The object of Congress in conferring exclusive jurisdiction over such accounts upon administrative or executive officials is sufficiently obvious: it can manifestly serve no useful purpose to have the various executive branches of the Government waste energy, money and time in more or less futile litigation in regard to matters of accounting; they are all agencies of the same Government and in the last analysis subsisting on Government funds. The Governor-General is vested with "the supreme executive power" (Organic Act, section 21) and by himself and through his subordinates, is ordinarily in a better position than are the ordinary courts to adjust differences between such agencies as to disposition of funds and the accounting therefor.

If this court can by mandamus interfere with the exercise by the Chief Executive of his constitutional prerogatives, the Courts of First Instance can do likewise. That this will not make for efficiency in administration, but will cause confusion and, in cases such as the present, tend to disrupt the government accounting system can hardly be doubted. Congress in the exercise of its plenary powers over territorial governments has deemed the appeal to the Governor-General an adequate mode of testing the validity of the decisions of the Insular Auditor and has made the remedy exclusive, and its views should be respected by the courts.

The majority opinion contains various statements which may create erroneous impressions. It is thus asserted that the ruling of the Auditor in this case was not delivered upon due process of law. In regard to this it may be observed that the point is not raised by the petitioner and that the presumption is that the proceedings were regular. In these circumstances the burden is not on the respondents to show affirmatively that there was due process of law. As far as the record shows the process may have been sufficient. The answer alleges that the Insular Auditor, "after due study of the claim of the Metropolitan Water District against the City of Manila, taking into consideration the conflicting contentions of both parties, reached the conclusion that the claim was just, legal and proper," and that he thereupon "made demand upon the City of Manila for the payment and settlement of the claim, advising the city that upon failure of payment, he would exercise the power vested in him by section 588 of the Administrative Code as amended by section 1 of Act No. 3066, but the city refused to comply with said

demand." This would seem to indicate that the parties were heard before the ruling was made. There is nothing to the contrary in the pleadings. Summary processes are not necessarily unjust or unconstitutional or open to the objection that they deprive persons of their property without due process of law (*McMillen vs. Anderson*, 95 U. S., 37).

The statement that the money claimed by the city "was assessed, levied and collected for a specific purpose and for such reason it should 'be treated as a special fund in the treasury and paid out for such purpose only' " is likely to be misunderstood. The money consists of so-called provincial and municipal allotments. Two-thirds of the city's allotments accrues to its general funds and may be made available for the payment of the account of the Metropolitan Water District (sections 491, 492, 494 and 495 of the Administrative Code).

The money is now in the Insular Treasury as a credit in favor of the city and there is some merit in the contention that the Auditor has no power to order it paid directly from the Treasury to the Metropolitan Water District without a previous appropriation by the Municipal Board, and if this court had jurisdiction of the case, it would no doubt have the power to issue a writ of injunction to the Insular Treasurer restraining him from making such payment. But that does not necessarily mean that the Insular Auditor may not decline to countersign a warrant for the transfer of credits from the Insular Treasury to a Government agency who fails or refuses to meet its financial obligations to another Government agency; that is another and entirely different matter.

By section 588 of the Administrative Code, as amended by Act No. 3066, the Insular Auditor is empowered to enforce the settlement of accounts subsisting between the various Government agencies. He cannot issue writs of mandamus or injunctions and, as far as I can see, the only means within his reach for enforcing settlement of such accounts by a recalcitrant Government agency, is to prevent the transfer to it of credits in the Government treasury which might otherwise be made available for the payment of the accounts. A debt to an agency of the Government may be said to be in effect a debt to the Government itself and it seems reasonable to require that before the debtor can demand payment of his credits from the Government, he must make provisions for paying the debt. In these circumstances, can the Insular Auditor be compelled by mandamus to lend his cooperation to the transfer of such credits to a defaulting debtor and thus incur the risk of having them dissipated for other purposes before any attempt is made to pay the debts? I do not think that such a state of affairs can have been contemplated either by Congress or by the Legislature.

I may say further that unless Act No. 2832, the charter of the Metropolitan Water District, is unconstitutional—and I do not think it will be so held—the excuse offered by the city for not settling the account here in Question is to my mind nothing but a flimsy pretext. If the city upon such pretexts can prevent the Insular Auditor from exercising his functions, other Government agencies may do the same, and the result can be nothing but confusion and delay in the settlement of Government accounts. An Act of the Legislature is presumed to be valid and until it is shown to be otherwise, the Auditor is justified in following its provisions. If the city desires to test the constitutionality of the statute in question, it should be required to do so by an action at law before being permitted to use the alleged unconstitutionality as an excuse for the non-payment of its debt.

Much more might be said in regard to the merits of the case, and the temptation to do so is strong, but for the sake of brevity I shall refrain from further discussion. Suffice it to say that the errors alleged to have been committed by the Insular Auditor might have been corrected by an appeal such as provided for in the Organic Act. We have no right to presume that the Governor-General would not have given due consideration to the petitioner's claims if they had been properly brought to his attention upon such appeal.

By way of recapitulation, my conclusions are that this court has no jurisdiction to entertain a petition such as that in the present case before the remedy of appeal to the Governor-General has been exhausted; that while the

Insular Auditor may not have the power to order that the funds here in question be paid to the Metropolitan Water District without a previous appropriation by the Municipal Board of Manila, he may nevertheless in the exercise of his power to enforce settlement of a disputed account decline to countersign a warrant for the transfer of the funds from the Insular Treasury to the city; that assuming without conceding that the court has jurisdiction over the case, it can only enjoin the Insular Treasurer from paying the funds to the Metropolitan Water District without previous appropriation, but has no power to compel the Insular Auditor to countersign a warrant for the transfer of the funds to the city; and that the court in assuming jurisdiction over the case has in effect undertaken to deprive the Chief Executive of jurisdiction expressly conferred upon him by constitutional statutes and has to that extent committed an encroachment upon the domain of a coordinate department of the Government, and has arrogated to itself powers not conferred on it by law. I do not maintain that a decision of the Insular Auditor or of the Governor-General would be conclusive as to the title to the property in dispute between the city and the Water District.

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