

grounds of appeal as it was not argued at the Bar and a decision thereon is not necessary for the disposal of this appeal.

The result, therefore, is that this appeal is dismissed with costs.

(Signed) A. R. CORNELIUS C. J.
S. A. RAHMAN J.
F. AKBAR J.
Hamoodur RAHMAN J.

Philippines

Transmitted by a note verbale dated 22 July 1963 of the Philippine Mission to the United Nations

A. LAWS AND DECREES

CONSTITUTION OF THE PHILIPPINES, 1935¹

Article I. — The National Territory

SECTION 1. The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight,² the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on the seventh day of November, nineteen hundred,³ and in the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty,⁴ and all territory over which the present Government of the Philippine Islands exercises jurisdiction.

Article XVII. — Special Provisions Effective upon the Proclamation of the Independence of The Philippines

SECTION 1. Upon the proclamation of the President of the United States recognizing the independence of the Philippines:⁵

(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippines.

(2) The officials elected and serving under this Constitution shall be constitutional officers of the free and independent Government of the Philippines and qualified to function in all respects as if elected directly

¹ Adopted by the constitutional convention of the Filipino people on 8 February 1935, approved by the President of the United States on 23 March 1935, and accepted by the voters of the Philippines by referendum on 14 May 1935.

² De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXXII, p. 74.

³ *Ibid.*, p. 82.

⁴ League of Nations, *Treaty Series*, vol CXXXVII, p. 297.

⁵ Proclaimed on 4 July 1946.

under such Government, and shall serve their full terms of office as prescribed in this Constitution.

(3) The debts and liabilities of the Philippines, its provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent Government of the Philippines; and where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any province, city or municipality therein, the Government of the Philippines will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be first lien on all taxes collected.

(4) The Government of the Philippines will assume all continuing obligations of the United States under the Treaty of Peace with Spain ceding the Philippine Islands to the United States.

. . .

B. DECISIONS OF NATIONAL COURTS

NOTES ON THE DECISIONS

1. *Effect of change of sovereignty*

(a) *On political laws of conquered territory:*

Roa v. Insular Collector of Customs, 23 *Philippine Reports* (hereinafter cited as "*Phil.*") 315 — Upon the transfer of territory, either by conquest or otherwise, the political laws of the conquered territory immediately cease to have effect, except in so far as they are continued in force by express consent of the new sovereign.

(b) *On municipal or non-political laws of conquered territory:*

(i) *Roa v. Insular Collector of Customs* (see *supra*) — Municipal laws of the transferred territory, however, not in conflict with the laws of the new sovereign continue in force without express consent of the new sovereign.

(ii) *Vilas v. City of Manila*, 42 *Phil.* 963 — That there is a total abrogation of the former political relations of the inhabitants of the ceded region is obvious. That all laws therefore in force which are in conflict with the political character, constitution or institutions of the substituted sovereign lose their force, is also plain. (*Alvarez v. United States*, 216 U.S. 167) But it is equally settled in the same public law that that great body of municipal law which regulates private and domestic rights continues in force until abrogated or changed by the new ruler.

2. *Effects of military occupation*

(a) *On political laws of occupied territory:*

Co Cham v. Tan Keh, 75 *Phil.* 113 — Laws of a political nature or affecting political relations, such as among other things the right of assembly, the right to bear arms, the freedom of the press, and the right to travel freely in the territory occupied, are considered as suspended or held in abeyance during the military occupation.

(b) *On municipal laws of occupied territory:*

Co Cham v. Tan Keh (see *supra*) — Unless absolutely prevented by the circumstances prevailing in the occupied territory, the municipal laws in force in the country, that is, those laws which enforce public order and regulate the social and commercial life of the country, shall be deemed continued and enforced.

(c) *Upon citizens' allegiance to the legitimate government:*

Laurel v. Misa, 44 *Official Gazette* 1176 — The absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of the government or sovereign "de jure" is not transferred thereby to the occupier, and if it is not transferred to the occupant it must necessarily remain vested in the legitimate government. What may be suspended is the exercise of the rights of sovereignty when the control and government of the territory occupied by the enemy passes temporarily to the occupant.

3. *Status of the Governments established in the Philippines during the Japanese military occupation*(a) *The Philippine Executive Commission:*

Co Cham v. Tan Keh, (see *supra*) — The Philippine Executive Commission, which was organized by Order No. 1, issued on 23 January 1942 by the Commander of the Japanese forces was a civil government established by the Military forces of occupation and therefore a "de facto" government of the second kind (government of paramount force). It was not different from the government established by the British in Castine, Maine, or by the United States in Tampico, Mexico.

(b) *Republic of the Philippines:*

Co Cham v. Tan Keh, (see *supra*) — The so-called Republic of the Philippines apparently established and organized as a sovereign state independent from any other government by the Filipino people, was, in truth and reality, a government established by the belligerent occupant or the Japanese forces of occupation. It was of the same character as the Philippine Executive Commission and the ultimate source of its authority was the same — the Japanese military authority and government. The so-called Republic of the Philippines, even if it had been established by the free will of the Filipino people who, taking advantage of the withdrawal of the American forces from the Islands, and the occupation thereof by the Japanese forces of invasion, had organized an independent government under that name with the support and backing of Japan, such government would have been considered as one established by the Filipinos in insurrection or rebellion against the parent state or the United States. And as such, it would have been a "de facto" government similar to that organized by the confederate states during the war of succession and recognized as such by the Supreme Court of the United States in numerous cases, and similar to that short-lived government established by the Filipino insurgents in the Island of Cebu during the Spanish-American war, recognized as a "de facto" government by the Supreme

Court of the United States in the case of *MacLeod v. United States*, 229 U.S. 416.

4. *Effects of Japanese military occupation*

(a) *On United States sovereignty in the Philippines during the Japanese occupation :*

Co Cham v. Tan Keh, (see *supra*) — Japan had no legal power to grant independence to the Philippines or transfer the sovereignty of the United States to, or recognize the latent sovereignty of, the Filipino people, before its military occupation and possession of the Islands had matured into an absolute and permanent dominion or sovereignty by a treaty of peace or other means recognized in the law of nations. For it is a well-established doctrine in international law, recognized in Article 45 of [Annex to] the Hague Convention of 1907 [concerning the laws and customs of war on land]¹ (which prohibits compulsion of the population of the occupied territory to swear allegiance to the hostile power), that belligerent occupation, being essentially provisional, does not serve to transfer sovereignty over the territory controlled although the “de jure” government is during the period of occupancy deprived of the power to exercise its rights as such. (*Thirty Hogshead of Sugar v. Boyle*, 9 Cranch 191; *U.S. v. Rice*, 4 Wheat 246; *Fleming v. Page*, 9 Howard 603; *Downes v. Bidwell*, 182 U.S. 345).

(b) *On the Philippine Commonwealth Constitution :*

(i) *Peralta v. Director of Prisons*, 75 Phil. 285 — The Constitution of the Commonwealth was not in force during the period of the Japanese military occupation. Nor may the said Constitution be applied upon its revival at the time of reoccupation of the Philippines by virtue of the principle of *postliminium*, because a constitution should operate prospectively only, unless the words employed show a clear intention that it should have a retrospective effect.

(ii) *Banaag v. Singson Encarnacion et al.*, *General Records No. L-493, 19 April 1949* — The question here is whether the Commonwealth Government can revoke the contract (of lease executed in favour of Banaag by the Philippine Executive Commission) even before the expiration of its terms after the liberation of the Philippines. *Held*: The Commonwealth Government has every right to revoke the privilege on the ground that the occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forest and agricultural works belonging to the hostile state and situated in the occupied territory. This is based on the principle that the government of occupation can lease lands and buildings, including fisheries, and make contracts in reference to them only for such time as it is in occupation. After the occupation ceases said contracts shall be deemed cancelled and terminated.

¹ De Martens, *Nouveau Recueil Général de Traités*, troisième série, tome III, p. 486.

5. *Legal effect, after liberation, of laws adopted during the Japanese military occupation by the Philippine Executive Commission and the (Puppet) Republic of the Philippines*

(a) *Proclamation of General MacArthur dated 23 October 1944:*¹

(i) *Co Kim Chow v. Tan Keh*, 75 Phil. 371 — All acts of the (Japanese) military government whether legislative, executive or judicial, if within its competence under the laws of war, are good and valid even after the restoration of the legitimate government. (To the same effect is the ruling in *Montebon v. Director of Prisons*, 78 Phil. 427.)

(ii) *Peralta v. Director of Prisons* (see *supra*) — Decisions promulgated during the Japanese occupation in civil or criminal cases without political colour were regarded as valid and enforceable even after liberation. However, upon restoration of the legitimate government, political acts fall through as a matter of course, whether they introduce any positive change into the organization of the country, or whether they only suspend the working of that already in existence.

(iii) *Luz v. Court of First Instance*, 77 Phil. 679 — On the other hand, General MacArthur's proclamation rendered of no force and effect, from and after the promulgation of the proclamation, the liberal divorce law promulgated by the Chairman of the Philippine Executive Commission. (See also *Baptista v. Castañeda*, 76 Phil. 461.)

République Centrafricaine

*Renseignements communiqués par note verbale en date du 25 octobre 1962
du Ministre des Affaires étrangères*

A. OBSERVATIONS

[Maintien en vigueur de la législation interne antérieure à la promulgation de la Constitution de la République Centrafricaine du 9 février 1959 — Position de la République Centrafricaine en ce qui concerne les traités conclus au nom des territoires d'outre-mer avant leur accession à l'indépendance]

En République Centrafricaine il n'existe qu'un seul texte réglant la question des successions d'État et de Gouvernement. Ils'agit de l'article 39 de la Constitution du 9 février 1959 . . .

En matière de relations internationales, les traités conclus par l'ancienne puissance colonisatrice au nom de ses territoires d'Outre-Mer ne peuvent être considérés comme restant en vigueur que dans leurs clauses qui ne sont pas incompatibles avec l'indépendance des États devenus souverains. En conséquence, la République Centrafricaine se réserve le droit de dénoncer les traités qui lui paraîtraient ne pas tenir compte de sa nouvelle souveraineté. Cette position est d'ailleurs corroborée par la

¹ Proclamation reads *inter alia*: "All laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control."