PARI DELICTO RULE PARRIED

Supreme Court justices are also human. They are liable to make an oversight. Thus, rulings are sometimes reversed or rephrased. Doctrines laid down years earlier and found then to be just are soon abandoned to give way to remedial rulings. This year alone has seen two doctrines reversed or modified. One of them is the much publicized "Stonehill Doctrine" which reversed the "Moncado Doctrine." And now comes the "Santos-Wong" case which modifies the *pari delicto* rule in Philippine jurisprudence in so far as this rule affects alienations of urban lands to aliens.

That this "Santos-Wong" case is significant, nobody contests. The day following its promulgation, newspapers carried news items and editorials on it. The President of the Philippines ordered the execution of the provisions of its rulings. Those adversely affected by the ruling are no doubt unhappy about it. Upholders of the Philippine Constitution and the "Filipino First" policy rejoice in it.

This paper is an attempt at distilling the different points touched by the decision. For a fuller understanding of the ruling and its implications, a historical survey of the development of this doctrine will be presented. In addition, decisions in previous cases which have been modified by the case will be analyzed in detail.

When the *Philippine Constitution* was ratified on November 15, 1935, Section 1, Article XIII, on the *Conservation and Utilization of Natural Resources* provided: "All agricultural, timber, and mineral lands of public domain . . ., and other natural resources of the Philippines belong to the State and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines . . . ." This provision pronounces a nationalistic policy.

Section 5 of the same article also provided for another nationalistic policy: "Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporation, or associations qualified to acquire or hold lands of the public domain in the Philippines . . ."

These two well-meaning provisions, however, presented a problem. What did "private agricultural land" mean? Did it mean land devoted to or to be devoted to strictly agricul-

tural purposes? If aliens could not acquire private agricultural lands, can they acquire ownership of commercial and residential lands? The *Krivenko* case [1] was submitted to the Supreme Court. By a peculiar kind of reasoning, objected to by four dissenting justices, the Court handed down a solution to the problem posed by the construction of the constitutional provisions. The decision and solution, promulgated on November 15, 1947, ruled: commercial and residential lands fall under the classification of private agricultural lands and hence aliens cannot acquire ownership of commercial and residential lands.

But this solution gave rise to another problem. What was the status of those commercial and residential lands alienated to aliens by Filipinos acting in good faith? With the promulgation of the *Krivenko* case, can the Filipino vendors go to court and ask for the recovery of their lands? A series of cases was brought before the Supreme Court. The next few pages will try to extract therefrom the rulings of the Court. These precisely are the rulings which are now qualifiedly modified by the "Santos-Wong" case.

The first case brought before the Supreme Court after the *Krivenko* case promulgation was *Trinidad Gonzaga de Cabauatan v. Uy Hoo.* [2] In this case Cabauatan sold to Uy Hoo, a Chinese alien, two parcels of land situated in Manila. The sale was consummated on March 18, 1943, when the Philippines was still under Japanese military occupation. On the strength of the *Krivenko* decision, plaintiffs, on December 15, 1947 — one month after the promulgation of the *Krivenko* decision — demanded from the defendants the restoration of the property sold on the ground that the sale was null and void. The Court of First Instance denied the demand and the case was appealed to the Supreme Court.

Principal protagonist of this case and other subsequent cases was Justice Bautista Angelo, now retired. He penned the decision of this and other cases of a similar set of facts. In a relatively short decision, the Supreme Court, speaking through Justice Bautista Angelo, denied the relief sought by the plaintiff on two grounds: first, citing *Peralta v. Director of Prisons,* [3] the Court said that during the Japanese Military occupation, the provisions of the Constitution of the Philippines were suspended. Hence, plaintiffs cannot avail of the provisions thereof. This was the principal reason for denying the remedy

[1] Krivenko v. Register of Deeds, 79 Phil. 461 (1947).
[2] 88 Phil. 103, 106-107 (1951).
[3] 75 Phil. 287 (1937).

sought. Second, and more significant for the purposes of this paper, was the *obiter dictum* of the Supreme Court.

Although in subsequent cases Justice Bautista Angelo referred to the second ground as a "doctrine laid down in the case of *Trinidad Gonzaga de Cabauatan et al., vs. Uy Hoo, et al., . . .*",[4] it is submitted it was not really a doctrine, it being merely a hypothetical assertion. Justice Paras, referring to the *Cabauatan-Uy Hoo* case second ground, used the word, "as also in timated in *Gonzaga de Cabauatan, et al., vs. Uy Hoo*, et al.," [5]. The second reason was then only an intimation and not a doctrine.

But whether the second ground was really a ruling or only an intimation is a moot question now because it has been constantly made the basis for subsequent decisions. The second reason was this:

> . . . . We can, therefore, say that even if the plaintiffs can still invoke the Constitution or the doctrine in the *Krivenko* case, to set aside the sale in question, they are now prevented from doing so if their purpose is to recover the lands that they have voluntarily parted with, because of their guilty knowledge that what they were doing were in violation of the Constitution. They cannot escape this conclusion because they are presumed to know the law. As this court well said: A party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out. The law will not aid either party to an illegal agreement; it leaves the parties where it finds them." The rule is expressed in the maxims: "*Ex dolo malo non oritur actio*," and "*In pari delicto potior est conditio defendentis.*" (Bough and Bough vs. Cantiveros and Hanopol, 40 Phil., 210, 216).[6]

As intimated in this quotation, therefore, where both parties are in *pari delicto* the courts will leave the parties where they are. A legal maxim states: he who comes to court must come with clean hands.

The *Cabauatan-Uy Hoo* case, however, was only the first stage in the development of the *pari delicto* doctrine, in so far as this doctrine affects alienations of real estates to aliens. The doctrine reached its full bloom — before the *Santos-Wong* case made it wither away — on September 29, 1953 when the Supreme Court on the same day promulgated the decision in four cases with similar sets of facts, to wit: *Rellosa v. Gaw Chee*

---

[4] Rellosa v. Gaw Chee Hun, 93 Phil. 827, 831 (1953).
[5] Bautista v. Uy Isabelo, 93 Phil. 843, 847 (1953).
[6] Cabauatan v. Uy Hoo, *supra* note 2.

Hun,[7] *Bautista v. Uy Isabelo*,[8] *Talento v. Makiki*,[9] and *Caoile v. Chiao Peng*,[10] all found in volume 93 Philippine Reports. With the exception of the *Talento v. Makiki* case, this paper will discuss the other three cases to draw therefrom the decisions and dissenting opinions of the Supreme Court justices. The most important of these cases is the *Rellosa v. Gaw Chee Hun* case which laid down the rationale of the ruling in the decision-in-chief, and the different dissenting opinions.

The facts of the case are as follows. On February 22, 1943 — the Philippines still under Japanese military occupation — Rellosa sold a piece of land and the house built thereon located in the City of Manila to Gaw Chee Hun, a Chinese alien. Reliosa remained in possession of the property under a contract of lease entered into on the same day between the same parties. After the war, Rellosa sought recovery of the property on the ground that, first, the sale was executed subject to the condition that the vendee being a Chinese citizen would obtain the approval of the Japanese Military Administration; second, even if such approval were obtained, the sale would have been void under section 5 Article XIII of the Constitution.

Defendant Gaw countered with three arguments: first, the sale was absolute and unconditional; second, in every respect the sale was valid and binding, not being contrary to law, morals, public policy, public order; third, the plaintiff was in estoppel, having executed a deed of lease over the property and thereby recognized the title of the defendant to the property.

The trial court upheld the defendant's claim and declared both the sale and the lease valid and binding. On appeal, the Court of Appeals upheld the trial court. On further appeal, the Supreme Court reversed the ruling of the statutory courts.

Again, Justice Bautista Angelo penned the decision-in-chief. While the *Cabauatan-Uy Hoo* case wound up with the declaration of nullity of the sale based on the main reason that the provisions of the Constitution could not be availed of by the plaintiffs, the same being suspended then, and on the second reason that both parties were in *pari delicto*, the *Rellosa-Gaw* case further refined the second reason and suggested possible remedies to the parties concerned.

---

[7] *Supra* note 4.
[8] *Supra* note 5.
[9] 93 Phil. 855 (1953).
[10] 93 Phil. 861 (1953).

The rationale of the *Rellosa-Gaw* ruling was a very logical one. But since this ruling was not a mere declaration of nullity but demanded some positive action, the decision was promulgated not without some dissenting opinions. Justice Bautista Angelo wrote the decision concurred in only by Justice Labrador; Justices Paras, Montemayor, and Tuason concurred in the result. Justice Bengzon provided the needed sixth vote in a qualified concurring opinion, an opinion which later rose to a ruling in the *Santos-Wong* case.[11] With the penning of this decision the *obiter dictum* in the *Cabauatan-Uy Hoo* case ripened into a doctrine.

The majority opinion rested on two main reasons. First, contrary to what had been suggested, the alienation of urban lands to aliens was not against public policy. Not being so, such alienation did not fall under the exception to the *pari delicto* rule found in article 1416 of the new Civil Code. Article 1416 provides:

> When the agreement is not illegal *per se* but is merely prohibited and the prohibition by the law is merely designed for the protection of the plaintiff he may if public policy is thereby enhanced, recover what he has paid or delivered.

Fully aware of the "public policy" exception to the *pari delicto* rule, the Supreme Court insisted that alienations of lands in violation of the Constitution do not fall under the exception. To further enhance their sincere belief in some exceptions to the *pari delicto* rule, Justice Bautista Angelo subsequently penned another decision which recognized and applied the exception. This was the case of *Catalino de los Santos v. Roman Catholic Church of Midsayap*,[12] the relevant portion of which is as follows:

> Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality (8 Manresa 4th ed., pp. 717-718), but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from reacquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated. . . . We are, therefore, constrained to hold that appellee can maintain the present action, it being in furtherance of this fundamental aim of our homestead law.[13]

The Supreme Court regarded the violation of the homestead law as a violation of public policy. Where the violation of the Cons-

[11] Phil. Banking Corp. v. Lui She, G.R. No. L-17587, Sept. 12, 1967. Fernando, Concurring, p. 2.

[12] 94 Phil. 405 (1954).

[13] *Id.* at 411.

bare majority.

With Justice Bengzon's concurring and at the same time dissenting opinion, the Supreme Court mustered the required majority vote. Justice Bengzon's very brief opinion was expressed in only two paragraphs. Paragraph number two, worth noting because it is acknowledged in the *Santos-Wong* case, stated:

> However I do not believe that the two ways suggested to solve the problem of alien-acquired lands are exclusive. Perhaps the innocent spouse of the seller and his creditors are not barred from raising the issue of invalidity.[17]

The "two ways" referred to here are obviously the action of the legislative department to pass a law to remedy the situation, and the two remedies which a militant executive department may pursue, i.e., reversion and escheat. He also suggested that perhaps other persons with an interest in the property may raise the issue of invalidity of the sale to aliens without inheriting the guilt of their predecessors. This hint becomes the heart of the *Santos-Wong* decision, as will be seen later.

The *Bautista v. Uy Isabelo*[18] case and the next cases to be discussed are only of peripheral interest in this paper. They deal with points related to the ruling laid down in the *Rellosa-Gaw* case, but they are not essential for the understanding of the basic ruling reversed by the *Santos-Wong* case. Rather, they are of great importance for a fuller understanding of the development of the *pari delicto* principle.

The facts of this case are essentially the same as that of the case just discussed and to be discussed next, i.e., they refer to alienations of urban lands to aliens during the Japanese military occupation. What is peculiar to this case, however, is that Hilaria Uy Isabelo is a Filipino woman who lost her citizenship by marriage to a Chinese husband. She bought the property in question while still married to the alien but later on, with the death of her husband, reacquired Filipino citizenship.

Of the four similar cases decided on September 29, 1953, this is the only one penned by a justice of the Supreme Court other than Justice Bautista Angelo, Justice Paras. It is understandable, therefore, as pointed out earlier, that while Justice Bautista Angelo referred to his own decision in the *Cabauatan* case as a doctrine laid down by the Supreme Court, Justice Paras only calls it only an intimation.

---

[17] *Id.* at 836.

[18] *Supra* note 5.

But aside from this human interest point, there is another point of interest and it is that the Supreme Court, while leaving the parties where they were because of the *pari delicto* ruling, gave a special consideration to Hilaria:

> Another consideration in favor of defendant Hilaria is that after the death of her Chinese husband on April 3, 1948, she had admittedly been repatriated and is now beyond question a Filipino citizen. [19]

This pronouncement lays down the rule that subsequent naturalization of an alien or his repatriation cures the defect of the sale and renders it valid. The obvious reason is that the purpose of the Constitution in reserving the patrimony of the nation to the Filipino people is thereby fulfilled.

It is also worth noting that Justice Reyes who dissented in all the other three cases, concurs in the result of this one on the ground that "the buyer of the property in question, though married to a Chinese at the time of the sale, subsequently recovered her Filipino citizenship after the death of her husband." [20]

The ruling that subsequent repatriation and/or naturalization of an alien cures the defect of the contract of sale illegally entered into is now subject to doubt in the light of the Supreme Court ruling in *Pascual v. Secretary,* [21] which provides that "The validity of a statute depends upon the powers of Congress at the time of its passage or approval, not upon events occurring, or acts, performed subsequent thereto. . . ." [22] Analogously, can it also be said that a contract illegally entered into cannot be cured by events occurring or acts performed subsequent thereto? Without going deeper into this question which may well be a topic for another paper, it would only be sufficient in this paper to quote the ruling of the Supreme Court applying the ruling that subsequent naturalization cures the defect of a sale illegally entered into:

> "However, if the ban on aliens from acquiring not only agricultural but also urban lands, as constructed by this Court in the *Krivenko* case, is to preserve the nation's lands for future generations of Filipinos, that aim or purpose would not be thwarted but achieved by making lawful the acquisition of real estate by aliens who become Filipino citizens by naturalization."[23]

---

[19] *Id.*, at 848.
[20] *Ibid.*
[21] G.R. No. L-12405, Dec. 29, 1960.
[22] *Id.*, at 6.
[23] Vasquez v. Li Seng Giap, 51 O.G. 717, 721 (1955).

Just what the status of this ruling is in the light of a more recent decision is unfortunately or perhaps fortunately, not the task of this paper.

Significant in the *Caoile v. Yu Chiao Peng*[24] case is the introduction of another reason why a person who alienates a piece of land to an alien during the Japanese occupation is guilty not only under the provisions of a suspended Constitution but also under a statute which, not being political in nature, was then in force — Commonwealth Act No. 141, otherwise known as the *Public Land Law*. The Supreme Court, speaking through Justice Bautista Angelo said:

> "We notice that both parties have taken the view that the law governing the validity of the sale is our present Constitution, which has been the subject of a ruling in the case of *Krivenko vs. Register of Deeds, G.R. No. L-630* while in our opinion the law that should govern the transaction is Commonwealth Act No. 141, otherwise known as the Public Land Act, (sections 122, 123, 124) which expressly prohibits the transfer of agricultural lands to aliens in the same way as they are prohibited from doing so under our Constitution . . ."[25]

This ruling triggers off some important questions: if the contravention of the *Homestead Law*, which is chapter IV of the *Public Land Law*, is against public policy, would not the violation of the *Public Land Law* be also a violation of public policy, being the very same law passed by Congress? Is not therefore the whole of the *Public Land Law* a proclamation of public policy? This point was not raised in the decision of the Supreme Court under scrutiny including the *Santos-Wong* case. In the humble opinion of the writer, if it is granted that the *Public Land Law* as a whole announces a public policy of the State (and it seems so for the *Homestead Law* which announces a public policy is chapter IV of the *Public Land Law*), then the ruling in the *Caoile-Yu* case punctures the very rationale of the *Rellosa-Gaw* case ruling in that violations of the *Public Land Law* would then fall under the exception to the *pari delicto* principle. And being such, the plaintiff must be given the right or privilege of recovery following the doctrine laid down in *de los Santos vs. Roman Catholic Church*, relevant portions of which have been quoted earlier. It seems, however, from the subsequent parts of the *Caoile-Yu* case that the Supreme Court then believed that to restore plaintiffs to the ownership and possession of the lands they sold to aliens in violation of the *Public Land Law*, unlike the *Homestead Law* would not enhance public interest.

---

[24] *Supra* note 10.
[25] *Id.*, at 862-863.

Coherent and concerned as the majority opinion may have been, it was not coherent and concerned enough to win the concurrence and approval of Justices Reyes, Pablo, and Padilla.

Giving the briefest dissenting opinion, Justice Reyes curtly countered the first argument in the *Rellosa-Gaw* case which stated that violations of section 5 article XIII of the Constitution did not constitute an exception to the *pari delicto* rule enunciated in article 1416 of the new Civil Code by saying:

> The doctrine invoked by the majority has no application where, as in the present case, the contract sought to be annulled is against public policy, the same being forbidden by the Constitution.[26]

The majority asserted that there was no violation of public policy; Justice Reyes asserted otherwise. There was a violation. He therefore ruled that the sale in question be annulled.

Justice Pablo disagreed with the majority opinion. He must have disagreed strongly because he reproduced his dissenting opinion in the *Rellosa-Gaw* case in its breadth, length, and depth in two other cases. His dissent seemed to depend on three main arguments.

First, the parties in this case were not really in *pari delicto* because there was no law which prohibited the sale of urban lands to aliens. There being no such law, the parties cannot be deemed to be in bad faith. Not being in bad faith, they cannot be equally guilty. In his own words:

> No existe ley que castiga la venta de un immueble a un extranjero. ?Han cometido culpa el comprador, el vendedor, o ambos a la vez? Creemos que no, porque la vento de un terreno es la cosa mas ordinaria del mundo. No hubo causa torpe en el contrato. No se probo que alguno de ellos o ambos, sabiendo que estaba prohibida la venta, la realizaron. No habian falta alguna. Ambas partes realizaron el convenio de la venta con la mejor buena fe. Bueno es hacer constar uqe no se ha probado que alguna de las partes o ambas havan obrado de mala fe, ni existe pruebas de que, sabiendo las partes que estaba prohibida la venta, le efectuaron sin embargo. La mala fe no se presume: debe probarse. A falta de prueba, la presuncion es que las partes obraron de buena fe. No es aplicable al caso presente el articulo 1306 del Codigo Civil.[27]

Article 1306 of the old Civil Code now article 1412 of the new Civil Code, is simply a statement of the *pari delicto* rule: "Cuando la culpa esté de ambos contratantes, ninguno de ellos podrá repetir lo que hubiera dado a virtud del contrato."

---

[26] *Supra* note 4, at 843.

[27] *Id.*, at 836.

From the above quoted portion of the decision and in other parts thereof, Justice Pablo, without explicitly saying it, seemed to imply that section 5 article XIII of the Constitution is not a self-executory provision. For if it were self-executory why should there be a law to punish violators of the Constitution in order to hold vendor and vendee alike in *pari delicto*.

Second, the plaintiff should be restored to his ownership and possession of the property alienated, because aside from the first reason that there was no bad faith or "culpa" on the part of both parties and hence article 1306 of the old *Civil Code* was not applicable, there was another reason why article 1306 could not apply and that was because the contract in question was null and void and did not have any legal existence.

Justice Pablo adduced the opinion of glossators who classify contracts into null and void *ab initio* and contracts which are only annullable. The first kind of contracts has no legal existence and the Supreme Court of Spain had ruled that article 1306 did not apply to contracts void *ab initio*. Since sale to aliens were in contravention of the Constitution, all the more were they void *ab initio*. He said:

> Los tratadistas clasifican los contratos en nulos y anulables: los primeros son nulos *per se* nulos *ab initio*, no tienen existencia legal; los segundos son anulables por haber sido obtenidos mediante violencia, engano, dolo, delito o falta, etc.

And thus in this case:

> El comprador no puede acogerse a las disposiciones del articulo 1306 del codigo civil español que es inaplicable, segun el Tribunal Supremo de España, a contratos inexistentes. Con mayor razon dicho articulo no puede oponerse con exito como defensa en una demanda en que se pide la declaracion de nulidad de la venta de un inmueble por ser contraria a la Constitucion y la devolucion de las cosas que las partes habian recibido.[28]

Third, Justice Pablo concluded, the majority decision violate the spirit of the Constitution and undermine its fundamental principle of conserving and reserving natural resources to Filipinos: He concluded:

> Desatender la demanda del vendedor y dejar que el comprador continue gozando de la propriedad comprada a pesar de la prohibicion, no es cumplir con la Constitucion; es violar su espiritu y minar su principio fundamental de propria conservacion.[29]

---

[28] *Id.*, at 842.

[29] *Ibid.*

Dissenting against the ruling in the *Caoile Yu Chiao Peng* case, which ruling was essentially the same as the *Rellosa-Gaw* case, Justice Padilla rested his opinions on a tripod of reasons.

First, he substantially adopted Justice's Pablo's first reason, i.e., that since the evidence did not show that the parties acted in bad faith, they should be presumed to have acted in good faith. Being in good faith, they cannot be in *pari delicto*. But the dissenting justice reenforced the reasons why the parties could not have been in bad faith. He explained:

> If among the members of this Court, there is a substantial minority who dissents from the interpretation made by this Court, how could the majority expect from a layman, an ordinary citizen to make an interpretation such as that made by the majority of this Court in the *Krivenko* case? It is not, therefore, illogical and unreasonable to hold that before the promulgation of the opinion in the *Krivenko* case, persons alienating urban lands to aliens disqualified to acquire and hold title thereto must be deemed to have acted in good faith. To hold otherwise is to indulge, I repeat, in a fiction which runs counter to fact, actuality, reality, and truth. [30]

A distinction is therefore drawn between alienations made before the promulgation of the *Krivenko* doctrine and those made after. If made before, good faith *must* be presumed. If made after, bad faith *may* be presumed.

Second, Justice Padilla tackled the three remedies suggested by the majority. He rebutted them one by one. Regarding the first one, reversion, he claimed that the same is only of limited application. "Reversion applies to lands that were originally part of the public domain." [31] Hence, reversion cannot give full remedy to the sad situation at hand because those properties in question were mostly of private ownership.

Regarding escheat proceedings, he claimed that the same was brought to this country only in a limited sense, being essentially a common law remedy. Hence, escheat will not provide full remedy. He argued:

> Escheat has been brought to this country in a limited sense only by the enactment of Act. No. 190 by the Philippine Commission and embodied in Rule 92 of the Rules of Court but not to its full extent as that proceeding is available in England and in the United States. Escheat proceedings resorted to in some states of the union against persons disqualified to hold title to real estate are based

---

[30] *Supra* note 10, at 872.
[31] *Id.*, at 873.
[32] *Ibid.*

on common law. The latter has never been extended to the Philippines. [32]

Regarding the third remedy which Congress may provide Justice Padilla asserted:

> If the legislative department has not enacted thus far a law which would afford a remedy to the vendor who sold an urban piece of land to an alien disqualified to own and hold it, it is because the Civil Code expressly provides for such cases and affords and points to a remedy to parties who are placed in that situation. [33]

The remedy which is already available is article 1398 of the new Civil Code. The application of this article, it should be noted, is premised on the supposition that a contract has been annulled and is not applicable to cases where the parties to a void contract are left where they are in *pari delicto*. It goes without saying that Justice Padilla, as a dissenter to the majority opinion would not leave the parties where they were but would annul the contract and restore the parties to what they have reciprocally parted with by virtue thereof. Article 1398 of the new Civil Code provides:

> "An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their respective fruits and the prices with its interest, except in cases provided by law. . . ."

If, therefore, restoration can be made, how is it to be made? Is such an action practicable? Would the result be just to both parties? These questions lead to the third reason for the Justice's dissent.

Third, and this is a practical reason, the pursuit of the dissenting opinion would render a concrete and just remedy. This solution is the return of the price and property reciprocally given. As to how much the equitable price would be should be left to the "equity jurisdiction" [34] of the courts.

Thus, the opinions of the triumvirate of dissenters, two of which base their case on a trinity of reasons, have been briefly explained. These opinions are important because from dissenting opinions they are promoted to the status of the *raison d'etre* of the *Santos-Wong* case which will concern this paper now.

Before dissecting the relevant portions of the *Santos-Wong* case, it would be profitable to summarize briefly the majority

---

[33] *Ibid.*
[34] *Ibid.*

opinion and the dissenting opinions of the cases just discussed. The majority opinion hinges on two reasons:

1. Alienations of commercial and residential lands to aliens in violation of the Constitution do not fall under the exception to the *pari delicto* rule. For to restore plaintiff to his property illegally alienated by him does not enhance the public interest but only the interest of the petitioner.

2. Although there is an unwelcome violation of the Constitution, the remedy for such transgression is not lodged in the courts but rather in the executive and legislative departments of the government. Congress may pass remedial legislation; the President may institute reversion and escheat proceedings.

The minority opinions number five in all:

1. Alienations of this kind are against public policy, the same being expressly prohibited by the Constitution.

2. The parties were not really in *pari delicto* because the sales in question were made before the *Krivenko* decision when the term "private and agricultural land" was not yet clearly defined. Hence, there may have been good faith.

3. Reversion and escheat proceedings are inadequate remedies. Congress need not pass a law because article 1398 of the Civil Code already provides a remedy where parties to a contract which has been annulled may recover what they have given by virtue of the contract.

4. The courts can provide an adequate remedy when questions regarding the return price and interests are concerned in the exercise of their equity jurisdiction.

5. The majority ruling violates the spirit and fundamental principles of the Constitution.

The real title of this case is: *"Philippine Banking Corporation, representing the estate of Justina Santos y Canon Faustino, deceased, Plaintiff-Appellant, versus Lui She, in her own behalf and as administratrix of the intestate estate of Wong Heng, deceased, Defendant-Appellant.*[35] For brevity this case has been baptized by the newspapers as *Santos-Wong* case.

The facts and rulings of this case are quite complicated. Questions ventilated by the Supreme Court include not only the

[35] *Supra* note 11.

question of *pari delicto* but also other points in Civil Law, especially contracts. This paper will occupy itself only with the *pari delicto* point.

With the death of her sister in 1957, Justina Santos became the sole owner of a 2,582.30-square-meter land, right in the business section of Rizal Avenue. Justina Santos was single and without heirs. She was also blind, crippled, an invalid, and 90 years of age. Her life was lonely and her only companions in the house were 8 maids and 17 dogs. Justina's otherwise "dreary existence was brightened now and then by the visits of Wong's 4 children who had become the joy of her life. Wong himself was the trusted man to whom she delivered various amounts for sakekeeping, including rentals from her property. . . . Wong also took care of the payment, in her behalf of taxes, lawyer's fees, funeral expenses, masses, salaries of maids, security guard, and household expenses." [36] This relationship was made possible because of Wong Heng's being a lessee of Justina Santos' property.

Santos and Wong, therefore, enjoyed a relation of mutual trust, mutual confidence, mutual benefit, and mutual gratitude. "In grateful acknowledgment of the personal services of the Lessee to her," [37] Justina Santos entered into five contracts with Wong within a span of one year which contracts are now the subject matter of the controversy. The contracts were:

1. November 15, 1957 — a contract of lease covering a portion of her property, for 50 years with the provision that the lessee may withdraw anytime.

2. November 25, 1957 — The contract was amended to include the whole of her property in Rizal Avenue including the land where the house of Justina stood.

3. December 21, 1957 — Another contract was executed giving Wong the option to buy the leased property conditioned on his obtaining Filipino citizenship.

Subsequently, Wong applied for naturalization. "It appears, however, that this application for naturalization was withdrawn when it was discovered that he was not a resident of Rizal. On October 28, 1958, she filed a petition to adopt him and his children on the erroneous belief that adoption would confer on them Philippine citizenship. The error was discovered and the proceedings were abandoned." [38]

---

[36] *Id.*, at 1-2.
[37] *Ibid.*
[38] *Id.*, at 2.

4. November 18, 1958 — Another contract extending the term of the lease to 99 years.

5. November 18, 1958 — The last contract fixing the term of the option to buy at 50 years.

In the two wills drawn subsequent to the five contracts, Justina Santos instructed her legatees to respect the contracts, the latter had entered into with Wong. But in the codicil which Justina later executed, she claimed that the contracts were made by her "because of machinations and inducements practiced by him (Wong)." [39] She now directed her executor to secure annulment of the contracts.

An action was filed with the Court of First Instance of Manila. The court declared the contracts null and void with the exception of the first one, the contract of lease. From this judgment both parties appealed directly to the Supreme Court. After the case was submitted for decision, both parties died, Wong Hen in 1962 and Justina Santos in 1964. Wong was substituted by his wife, Lui She; while Justina Santos by the Philippine Banking Corporation.

To clarify the relevant issues of the case and the respective rulings, four questions may be asked: 1. Were the contracts really obtained by means of machination? 2. Were the contracts valid? 3. Were the parties in *pari delicto?* 4. Do the parties have a remedy?

Whether the contracts were obtained by machinations, the Supreme Court, speaking through Justice Fred Ruiz Castro, reversed the findings of the lower court. Adducing evidence from the transcript of stenographic notes, the court showed that the contracts were validly entered into.

Whether the contracts were valid, they having been invalidly entered into, the Supreme Court answered in the negative. For while the intention of Justina was clear, this intention "gives the clue to what we view as a scheme to circumvent the Constitutional prohibition against the transfer of lands to aliens." [40]

Whether the parties were in *pari delicto*, the Court answered in the affirmative.

Whether the parties have remedies inspite of *pari delicto*, the Court again answered in the affirmative.

---

[39] *Ibid.*

[40] *Id.*, at 10.

It may now be queried how the Supreme Court arrived at the conclusion that there was alienation of a commercial land to an alien. A contract of sale was never executed. There were five lease contracts all in all, one with option to buy. But there was no contract of sale. Is it not true that in this jurisdiction, aliens may not acquire ownership of urban lands, but they can validly enter into a contract of lease? And if so, are those five contracts of lease entered into by Santos and Wong valid? In answering this, the Supreme Court said:

> Taken *singly*, the contracts show nothing that is necessarily illegal, but taken collectively, they reveal an insidious pattern to subvert by indirection what the Constitution directly prohibits.[41] (Italics supplied)

The Supreme Court, therefore, affirms that aliens may enter into a contract of lease. However, with reference to this case, the Court claims that the five contracts in question may be seen from two viewpoints. First, the contracts may be seen singly. Thus seen, there is nothing in these contracts that is necessarily illegal. Second, the contracts may be seen collectively. Thus seen, the contracts show an insidious scheme to circumvent or subvert by indirection what the Constitution prohibits. The Supreme Court explicitates the second viewpoint thus:

> But if the alien is given not only a lease of, but also an option to buy a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi, jus utendi, jus fruendi, jus abutendi*) but also of the right to dispose of it (*jus disponendi*) — rights the sum total of which make up ownership. It is just as if today the possession is transferred, tomorrow, the use, the next day, the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in an alien. And yet this is just exactly what the parties in this case did within the space of one year, with the result that Justina Santos' ownership of her property was reduced to a hollow concept. If this can be done, then the Constitutional ban against alien landholding in the Philippines, as announced in *Krivenko v. Register of Deeds*, is indeed in grave peril.[42]

Having declared the five contracts as collectively illegal and invalid, does the doctrine of *pari delicto* apply to the parties? This now, is the heart of the decision. In modifying the *pari delicto* rule, the Court says:

---

[41] *Ibid.*

[42] *Id.* at 12.

> It does not follow from what has been said, however, that because the parties are in *pari delicto* they will be left where they are, without relief. For one thing the original parties have died and have since been substituted by their administrators to whom it would be unjust to impute their guilt. For another thing, and this is not only cogent but also important, article 1416 of the Civil Code provides, as an exception to the rule on *pari delicto*, that 'when an agreement is not illegal *per se* but is merely prohibited, and the prohibition by law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.' The Constitutional provision, Section 5 Article XIII, is an expression of public policy to conserve lands for the Filipinos. [43]

From the perusal of the reproduced portion of the decision, one can easily see that the Court gives two reasons why the parties should not be left where they are, contrary to the previous rulings in the *Cabauatan* and *Rellosa* cases.

First, the Highest Court points out that the parties who were in *pari delicto* have already died. Now in possession of their properties are their administrators. And it would be unjust to impute the guilt of the predecessors to their successors. Justice Bengzon's qualified concurring opinion in the *Rellosa* case immediately comes to mind. It may be remembered that Justice Bengzon then said, "Perhaps the innocent spouse of the seller and his creditors are not barred from raising the issue of invalidity." [37] Justice Bengzon's suggestion that the wife of the seller and his creditors may raise the issue of invalidity, is therefore adopted by the Supreme Court as the *ratio decidendi* of the present case.

Second, the Constitutional Court rules that a violation of section 5 article XIII of the Constitution is a transgression of the public policy, and that furthermore, to grant the seller the right of recovery is an act that would enhance public interest. Being so, then such void sale falls under the exception of article 1416 of the new Civil Code. To stress such public policy the Supreme Court continues:

> That policy would be defeated and its continued violation sanctioned if, instead of setting the contracts aside and ordering the restoration of the land to the estate of the deceased Justina Santos, this Court should apply the general rule of *pari delicto*. [44]

This second reason for classifying sale of lands to aliens as an exception to the *pari delicto* rule echoes the opinion of Justices

---

[43] *Ibid.*

[44] *Supra* note 4 at 836.

Reyes and Pablo, dissenters in the cases mentioned earlier.

Penning the unanimous decision of this case, Justice Fred Ruiz Castro adduces only two reasons why the *pari delicto* rule as applied to alienations of lands to aliens should be modified. In a separate concurring opinion, however, Justice Enrique Fernando further provides other reasons, most of which were previously expressed by the triumvirate of dissenters in previous cases.

Before discussing Justice Fernando's concurring opinion, it should be profitable to inquire just to what extent the previous rulings of the Supreme Court in those cases following the *Rellosa* opinion have been affected. The Highest Tribunal says:

> To the extent that our ruling in this case conflicts with that laid down in *Rellosa v. Gaw Chee Hun and* subsequent similar cases, the latter must be considered as *pro tanto* qualified. [45]

The *Rellosa* case, therefore, is only qualifiedly modified and not reversed. It is to be remembered that the majority opinion of the *Rellosa* case rests on two propositions. First, alienations of urban lands to aliens in violation of the Constitution is not contrary to public policy. It is not, therefore, an exception to the *pari delicto* rule. This part of the decision is totally reversed. The *Santos-Wong* case is explicitly clear on that. Second, although there is a violation of the Constitution, the remedy for this transgression is lodged in the executive and legislative departments of government. The President may institute escheat and reversion proceedings and Congress may pass a remedial statute. The *Santos-Wong* ruling is silent in this regard.

Regarding the first point, is it to be understood that Filipino vendors may now recover properties they illegally alienated to aliens even if they were in bad faith? Although the decision-in-chief does not univocally and expressly declare that Filipino vendors can now reacquire properties sold by them to aliens, it is submitted that in the light of the rulings of the *Santos-Wong* case the answer must be in the affirmative. Yes, they may now reacquire them. The reason for this is that the above illegal sales are now considered an exception to the *pari delicto* doctrine.

Following the ruling in the case already mentioned, *Catalina de los Santos vs. Roman Catholic Church of Midsayap*, the new ruling must be construed similarly. The parties to an illegal contract can go to court to sue for the recovery of lands illegally alienated by them. There is no need for any legislative act granting this right of recovery.

---

[45] Phil. Banking Corp. v. Lui She, *supra* note 11, at 13.

With regard to the second point, since the new ruling is silent on the point, it may be presumed that those parts of the decision in the *Rellosa* case, which are not expressly reversed are deemed still operative if they are not contrary to the new ruling. It is submitted that the new ruling and the second reason of the *Rellosa* case can stand side by side. Accordingly, the President, in proper cases, may institute reversion or escheat proceedings; Congress, if there is still a necessity, may pass a law providing for the procedure for the recovery of lands alienated in violation of the constitutional prohibition.

Just how escheat proceedings in connection with alienations of lands to aliens may proceed is not yet very clear in this jurisdiction. As pointed out by Justice Fernando in his concurring opinion (which will be discussed later) there has been no escheat proceedings started by the executive since the promulgation of the *Krivenko* decision. The New Rules of Court, rule number 92, section 5 provides:

> "*Other actions for escheat.* Until otherwise provided by law, actions for reversion or escheat of properties alienated in violation of the Constitution or of any statute shall be governed by this rule except that the action shall be instituted in the province where the land lies in whole or in part."

Whether this rule is effective is still a point of doubt. The main objection raised against this provision is that the New Rules of Court is primarily procedural in nature. A statute is needed which would grant the President or any administrative body the power to start escheat proceedings.

As pointed out earlier by Justice Padilla, escheat has been extended to the Philippines only in a limited sense. It was introduced by Commonwealth Act No. 190 and the same is incorporated in the Rules of Court. Being of common law origin, escheat cannot be used to its full extent in the Philippines.

However, as submitted in this paper, the ruling on escheat and reversion in the *Rellosa* case should not be deemed superseded by the *Santos-Wong* case because first, it is not expressly superseded, and second, it can stand side by side with the new ruling. It can stand side by side with the new ruling because Congress may still pass a law which would give life to the procedural provision in the New Rules of Court.

The above discussion, therefore, has attempted to show how the rulings in the *Rellosa* case has been partly reversed and partly retained, or in the words of the decision, "*pro tanto* qualified."

Concurring Justice Fernando agrees fully "with the able and well opinion of Justice Castro, . . . The exposition of the facts leave nothing to be desired and the statement of the law notable for its comprehensiveness and clarity." [46] But just the same he gives a concurring opinion notable for its comprehensiveness and clarity.

His concurring opinion is based mainly on the dissenting opinions to the superseded or modified cases. He does not, however, copy the ideas therein expounded and reproduce them. He adds his own support to the dissenting opinions, or more accurately now, the new majority decision.

He considers first the point of good faith. On this point he relies heavily on Justice Padilla's distinction that good faith must be presumed in alienations made before the promulgation of the *Krivenko* case; while bad faith may be presumed in alienations made after. While Justice Padilla offered as a reason the fact that even the Court in the *Krivenko* case was divided and thus the ordinary layman should not be presumed to interpret the constitutional provision as the majority of the Supreme Court did, Justice Fernando adds two further reasons.

First, he cites article 526 of the new Civil Code which allows as a basis for good faith, mistakes upon doubtful or difficult questions of law. He states:

> "Since the sales in question took place prior to the *Krivenko* decision, at a time when the assumption could be honestly entertained that there was no constitutional prohibition against the sale of commercial or residential lots by Filipino-vendor to alien-vendee, in the absence of a definite decision by the Supreme Court, it would not be doing violence to reason to free them from the imputation of evading the Constitution. For evidently evasion implies at the very least knowledge of what is being evaded. The new *Civil Code* expressly provides: 'Mistakes upon a doubtful or difficult question of law may be the basis of good faith.'" [47]

Second, he draws in a principle in constitutional construction:

> "This statement that the sales entered into prior to the *Krivenko* decision were at that time already vitiated by a guilty knowledge of the parties may be too extreme a view. It appears to ignore a postulate of a constitutional system, wherein the words of the Constitution acquires meaning through Supreme Court adjudication." [48]

---

[46] *Ibid.*

[47] *Id.*, Fernando, Concurring, p. 1.

[48] *Id.*, pp. 2-3.