

his prospective wife Laureana, one-half of said property by virtue of a donation *propter nuptias* executed on April 14, 1937. On May 4, 1944, Julian Raymundo sold his undivided one-half interest to Nicanor Rosario, the deed of sale having been registered in the Office of the Register of Deeds on the same date. The vendee has been in possession of the portion purchased by him from the date of transfer up to the present time. On May 12, 1944, Laureana Torio filed the present action for legal redemption, and on August 17, 1949, she deposited the amount of ₱40 as redemption price.

From the foregoing facts, the lower court held that plaintiff has lost her right to redeem the property due to her failure to offer to repurchase the property before she instituted the present action which is a *sine qua non* requirement before she could exercise the right of legal redemption, and dismissed the complaint. Not agreeable to the decision, the plaintiff appealed.

**HELD:** As held by the Supreme Court in a similar case (*De la Cruz vs. Marcelino*, 42 O. G. 1761), although Art. 1525 makes applicable to legal redemption the provisions of Arts. 1511 and 1518 (old Civil Code), these articles merely enumerate the amounts to be paid by the co-owner who wishes to redeem. They do not postulate any previous notice to the new owner nor a meeting between him and the redemptioner, much less a previous formal tender, before any action is begun in court to enforce the right. A sensible and prudent man would naturally endeavor to present the offer privately, to avoid the inconvenience of court proceedings. But it is not always just to graft into the statute such rules of common sense as may be deemed appropriate. And, considering that the co-owner has nine days only (Art. 1524, old Civil Code), the "previous tender" requisite might in some instances frustrate the assertion of the co-owner's prerogative. The new owner might even conceal himself to prevent redemption. It is imperative that such offer or tender is not an essential condition precedent to the co-owner's right to redeem. The important thing is to assert it in time and in proper form. The action and the consequent consignation must be held proper and the plaintiff's right to redeem must be upheld.

It appearing that the action for legal redemption was instituted by the plaintiff before the expiration of the period of nine (9) days from the date the deed of sale of the property in question was recorded in the office of the Register of Deeds, which step has the

effect of an offer or tender to redeem contemplated by the law, the plaintiff has not lost her right to exercise such legal redemption.

The decision appealed from is reversed and the defendant is ordered to execute a deed of reconveyance in favor of the plaintiff for the sum of ₱150 over one-half portion of the property in litigation, upon payment by plaintiff to defendant of said amount. (*Laureana Torio vs. Nicanor Rosario*, G. R. No. L-5536, prom. Sept. 25, 1953.)

## POLITICAL LAW

**CONSTITUTIONAL LAW; LEGISLATURE CAN ENACT LAWS BUT NOT INTERPRET THEM AS CONSTITUTIONAL WHEN IN FACT VIOLATIVE OF CONSTITUTIONAL PROVISIONS.**

**FACTS:** Justices Pastor M. Endencia of the Court of Appeals and Fernando Jugo of the Supreme Court were correspondingly taxed income tax for their salaries as Members of the Judiciary. Accordingly they paid their tax liabilities, but asked for their refund in accordance with the provisions of Sec. 306 of the National Internal Revenue Code. As the Collector of Internal Revenue refused to pay the refund, said judicial officers filed the action before the Court of First Instance which, after hearing, rendered decision ordering the Collector to refund the income tax paid by said Justices, pursuant to the ruling in the Perfecto case on the same matter.

The Collector of Internal Revenue appealed, contending that inasmuch as the Congress did not favor the court interpretation of the provision of Sec. 9, Art. VIII of the Constitution which exempts judicial officers from the payment of income tax as the same is a diminution of their salaries, said body enacted Republic Act 590, to counteract the ruling in the Perfecto case, particularly section 13 thereof which provided that no salary wherever received by any public officer of the Republic of the Philippines shall be considered as exempt from the income tax, payment of which is thereby declared not to be a diminution of his compensation fixed by the Constitution or by law.

**HELD:** The Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. The executive department is charged with the execution or carrying out of the provisions of said laws, and its interpretation and application belong exclusively to the judicial department. If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts had in an actual case ascertained its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under such a system, a final court determination of a case based on a judicial interpretation of the law or of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental principles of our constitutional system of government, particularly those governing the separation of powers.

When a judicial officer assumes office, he does not exactly ask for exemption from payment of income tax on his salary, as a privilege, it is already attached to his office, provided for and secured by the fundamental law, not primarily for his benefit but based on public interest, to secure and preserve his independence of judicial thought and action.

The interpretation and application of the Constitution and of statutes is within the exclusive province and jurisdiction of the Judicial department, and in enacting a law, the Legislature may not legally provide therein that it be interpreted in such a way that it may not violate a constitutional prohibition, thereby tying the hands of the courts in their task of later interpreting said statute, the hands of the courts in their task of later interpreting said statute, runs counter to a previous interpretation already given in a case by the highest court of the land.

Decision appealed from affirmed. (*Endencia, et al. vs. Saturnino David, Etc.*, G. R. No. L-6355-6356, prom. Aug. 31, 1953.)

ADMINISTRATIVE LAW; SUPERVISORY POWERS OF COMMISSIONER OF CUSTOMS AND DEPARTMENT HEADS IN SEIZURE AND CERTAIN CASES; VALIDITY OF MEMORANDUM ORDERS.

**FACTS:** On January 2, 1951, the Collector of Customs for the Port of Manila ordered the seizure of two shipments of textiles and a number of sewing machines (Seizure Identification No. 1006) consigned to Sy Man. On June 4, 1951, the Collector of Customs for the Port of Manila, after due hearing, rendered decision, ordering the delivery of the articles seized to Sy Man, after payment of the necessary customs duties, sales tax and other charges due thereon, in addition to a fine of P155.00, except the sewing machines which were declared forfeited to the government and to be sold at public auction if found saleable, otherwise to be destroyed. Said decision was received by Sy Man on June 27, 1951. By letters dated July 12 and August 21, 1951, counsel for Sy Man requested the Collector of Customs to release the goods, as per decision which had become final, and at the same time expressed readiness to comply with the terms thereof. On August 24, 1951, the Collector of Customs informed counsel for Sy Man that their letter of July 12th was endorsed to the Commissioner of Customs requesting information whether the merchandise covered by Seizure Identification No. 1006 could be released to the importer as the decision on the case had already become final, to which no reply had yet been received. The indorsement of the matter to the Commissioner was in accordance with the Memorandum Order of the Commissioner (the Insular Collector) of Customs, dated Aug. 18, 1947. Accordingly, Sy Man filed a petition for certiorari, prohibition and mandamus before the Court of First Instance of Manila, which said court granted, ordering the Commissioner and the Collector to execute the decision of the latter dated June 4, 1951, which had already become final. The Commissioner appealed, contending that as head of the Bureau of Customs and the chief executive and administrative officer thereof under Sec. 550, Rev. Adm. Code, and also by virtue of Sec. 1152 of the same Code, he had the supervision and control over the Collector and that by reason of said supervision and control, he may *motu proprio* review and revise decision of the Collector in seizure cases even when not appealed by the importer. It was under this theory that the Commissioner promulgated his Memorandum Order of August 18, 1947.

When merchandise or goods are imported through any of the ports of the Philippines, under normal circumstances, said goods are assessed for purposes of payment of customs duties, fees and other money charges. If satisfied with the assessment the importer pays the charges and withdraws the goods. Failure to protest renders the action of the Collector conclusive against the importer