der and by virtue of the said resolutions and contract, until further order from the court. Petition for a writ of mandatory injunction is denied. (*Isabela Sugar Co., as stockholder of the Binalbagan-Isabela Sugar Co., Inc., in its own behalf and in behalf of other stockholders who may desire to join therein, vs. Eugenio Lopez, Ernesto Oppen, Jr., Jose Soriano, Carlos Rivilla, Ricardo Nepomuceno, and Jose M. Yusay; the Planters' Investment Co., Inc.; and the Binalbagan-Isabela Sugar Co., Inc. Court of First Instance of Manila. Promulgated*: *Oct.* 26, 1951).

The proposition that the corporation has an existence separate and distinct from its membership has its limitations.

Whenever necessary for the protection or enforcement of the rights of the membership, courts will disregard this legal fiction and operate both upon the corporations and the persons composing it. Where the stock of a corporation functions only for the individual should be deemed to be the same. (*Arnold vs. Willitz and Patterson,* 44 *Phil.* 636). This is also true when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Also where the corporation is so organized and controlled, and its affairs so conducted as to make it merely an instrumentality, agency, conduit, or adjunct of another corporation. (*Koppel (Phil.) Inc. vs. Yatco,* 43 *O.G. No.* 11 *p.* 4604) The courts will disregard a corporate entity to prevent evasion of law and conversely will regard it as a separate entity to prevent evasion. The corporate entity and distinction from the members may be disregarded more readily where only the members are affected and no right of creditors or third persons or the public is involved. They may be stopped from saying that formal action was not taken. (*Cagayan Fishing Development vs. Sandiko,* 36 *O. G.* 118, *May* 1938)

Meynardo A. Tiro

POLITICAL LAW — RIGHT OF CITY OR MUNICIPALITY TO EXPROPRIATE PRIVATE LANDS FOR RESALE TO SQUATTERS OR TENANTS. Under Commonwealth Act No. 539, a City or Municipality has the power to expropriate private lands for resale to squatters or tenants. This statute, however, like any other law, gives rise to inevitable queries, concomitant to the interpretation put on it by attorneys in cases falling under it and the lower courts in which such cases are tried. What area or extent of land must be within

the operative radius of CA 539? What use must a land sought to be expropriated be devoted to? Will previous contracts burdening the land be taken into account in ascertaining its expropriability? The Supreme Court has definitely ruled upon and squarely decided these questions in the following cases.

The leading case of *Justa G. Guido vs. Rural Progress Administration*[1] decided by the Supreme Court on Oct. 31, 1949, sufficiently resolved the foregoing queries. The facts of this case are simple. Two adjoining lots, partly commercial, with an aggregate area of 22,655 sqm., located in Maypajo, Caloocan, Rizal, belonging to Justa G. Guido, were sought to be expropriated under a complaint filed for that purpose in the Court of First Instance of Rizal. While the proceedings was pending, Justa G. Guido filed a petition for Prohibition in the Supreme Court to prevent the Hon. Oscar Castelo of the CFI of Rizal from proceeding with the expropriation. Petitioner relied, among others, on the following grounds: (1) That the lots sought to be expropriated, being small lots, are not embraced within CA 539. (2) That majority of the tenants have a lease contract with petitioner and to allow the expropriation to proceed and terminate would mean an impairment of the obligation of contract which is prohibited by the Constitution.

Sec. 1 of CA 539 states: The President is authorized to acquire private land or any interest therein through purchase or expropriation and to subdivide the same into house lots or small farms for resale at reasonable prices and under conditions as he may fix, to their bona fide tenants or occupants or to private individuals who will work the land themselves and who are qualified to acquire and own land in the Philippines.

Sec. 2 of the same Act says: The President may designate any Department, Bureau, Office or instrumentality of the National Government or he may organize a new agency to carry out the objectives of this Act. For this purpose such body so created or designated shall be considered a public corporation.

The National Assembly approved this enactment on authority of Section 4, Article XIII of the Constitution which reads as follows: "Congress may authorize upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."

In granting the Prohibition the Supreme Court ruled that CA 539 contemplates large estates to be the subject of expropriation and not small lots like these. Lots being sought for ex-

[1] 47 O. G. 1848

propriation which have an aggregate area of 22,655 sq.m. only. And proceeding to reason out the breaking up of large estates it says: In paving the way for the breaking up of existing large estates, trust for perpetuity, feudalism and their concomitant evils, the Constitution did not propose to destroy or undermine property rights or to advocate equal distribution of wealth or to authorize the taking of what is in excess of one's personal needs and giving it to another.

The owner of private property subject of expropriation is given just compensation in accordance with the time-honored principle that only with the payment of the reasonable value of property can it be taken by the authorities. And the same is taken for public use because if the use for which it is to be devoted is private, the taking would amount to a relieving of the owner of his property without due process of law.

The condemnation of a small property in behalf of 10, 20, or 50 persons and their families does not inure to the benefit of the public to a degree sufficient to give the use public character. The expropriation proceedings in hand has been instituted for the economic relief of a few families without considerations of public health, public peace and order or public advantage.

Furthermore, there are about 30 tenants with contract of lease with the petitioner ranging from 2 to 30 years. What is proposed to be done in this case is to take petitioner's property and sell it to tenants who refused to pay the stipulated rent or leave the premises. What is sought to be accomplished here is patterned after an ideology far removed from that consecrated in our government and embraced by majority of citizens in this country. To uphold this case would open the gates to more oppressive expropriations.

It is to be noticed that the Supreme Court decision hinges on the area of land to be expropriated and the use to which it should be devoted.

The case of *City of Manila vs. Arellano Law Colleges*[2], decided by the Supreme Court on February 28, 1950, re-affirmed the decision of Justa G. Guido vs. Rural Progress Administration and the complaint for expropriation of 7,270 sq.m. in Legarda street owned by the Arellano Law Colleges was consequently dismissed. But here the salient point principally considered was the fact that the land sought to be expropriated was intended to be the site of a contemplated University. In

[2]47 O. G. 4197

weighing the purpose to be subserved by the expropriation and the use for which it was intended by its owner, the Supreme Court held that,

> "Any good that would accrue to the public from providing homes to a few families fades into insignificance in comparison with the preparation of young men and women for useful citizenship."

It was ruled in the case of *Lee Tay and Lee Chay vs. Florencio Choco*[3] which was decided on December 29, 1950 that the case of Justa G. Guido vs. Rural Progress Administration was applicable to it. The Court of First Instance of Manila held that the persons in whose behalf expropriation was sought were mere squatters and as such could not seek the benefits CA 539 provides. The Supreme Court, in deciding the appeal from the dismissal of the lower court, again reiterated its stand in the Guido case to the effect that CA 539 refers only to big landed estates and not to small parcels of land.

In the case of *Sixto Pangilinan vs. Honorable Emilio Pena*[4] decided by the Supreme Court on May 28, 1951, the doctrine in the Guido case was again applied although the main point on which the judgment swings was the applicability of CA 539. This CA 539 provides for automatic suspension of ejectment proceedings against tenants occupying lands belonging to the estate of chaplaincy when the Government seeks to acquire, through purchase or expropriation proceedings, said lands. And the action of the Government is considered instituted from the date of filing the complaint for expropriation in the proper court. The facts briefly are as follows: A lot with an area of 180 sq. m. belonging to the Nagtahan estate was leased by Luis Gaddi with an option to purchase. Later all rights of Gaddi were transferred to Crispulo Manansala who exercised the option to purchase and consolidated to himself the ownership of said lot. But on this lot were two houses built by Gaddi and which were subsequently sold one to Manansala and the other to Sixto Pangilinan. Upon acquisition of ownership, Manansala demanded that Pangilinan vacate the land but the latter obstinately refused, to the consequent effect of a complaint in ejectment being filed by the former aginst the latter. Judgment in the Municipal Court of Manila was in favor of the plaintiff. Appeal was made to the CFI of Manila in the branch presided over by the Hon. Emilio Pena

[3]G. R. No. L-3297
[4]45 O. G. (S) 114

against whom this petition for certiorari was filed. But appellant having failed to deposit the rents on time, execution of the judgment was given due course. And hence this petition for certiorari, respondent Judge allegedly having acted without or in excess of jurisdiction in ordering the execution of the judgment of the Municipal Court and in refusing to apply the aforecited provision of CA 539; it being shown that since as early as 1947 the City of Manila has started negotiation for the purchase of the Nagtahan Estate. And that, although this proved to be a fiasco, in 1949 the Municipal Board of Manila passed Resolution No. 73 authorizing expropriation and same was approved by the President and his Cabinet. The Supreme Court, however, disposed of the first error raised by holding that, when rents are not paid, execution is mandatory and the duty of the CFI becomes merely ministerial in giving due course to the execution of the judgment of the Municipal Court. Regarding the second point, it was sustained by the evidence that the lot in question was leased to Gaddi even before the first negotiation and before the expropriation of the Nagtahan Estate was started by the City of Manila, and consequently, CA 539 is not applicable.

In the latest case of *Rural Progress Administration vs. Leon Samia*[5], et. al. decided by the Supreme Court only last July 18, 1951, practically the same objections were made by the owner of the land sought to be expropriated as those made by Justa G. Guido in the leading case of Guido vs. Rural Progress Administration. And the Supreme Court merely decided the applicability or not of the Guido case after considering the facts of the instant case. This land sought to be expropriated has an aggregate area of 5,341 sq.m. and is under occupancy by 47 tenants. The complaint for expropriation having been filed, the CFI of Manila, pursuant to the Rules of Court, promulgated an order fixing ₱6,769 as the provisional value of the property and ordering the Sheriff to place plaintiff in possession, after he shall have accomplished the monetary deposit. In their answers, defendants relied principally on the fact that the lands being small lots, they may not be taken, not being within the contemplation of CA 539. However, there is an assertion that the use for which the land was sought to be expropriated is not contemplated by CA 539. Hearing on the merits began and after the Rural Progress Administration had introduced about a third of its evidence, the decision in the case of Guido vs. Rural Progress Administration was promulgated and the defendants reiterated their

[5]G. R. No. L-3900

motion to dismiss based on the following ground: (1) The 42 lots sought to be expropriated are not contiguous and belong to different owners. (2) The conflict between Samia and the tenants is not such as is contemplated by Act 539 for the same is due to the refusal of the tenants to pay the rentals due to Samia, arrears dating as far back as 1938. (3) That the use for which it was intended was not public, since the expropriation proceedings was taken advantage of only to acquire those lots and then resell them for profit, considering the high market price the lots command because of their location as residential lots. The case was dismissed by the CFI following the ruling in the invoked case of Guido vs. Rural Progress Administration. Their motion for reconsideration having been denied, the plaintiff and third party defendants (the tenants) filed a joint record on appeal to the Supreme Court. The main question here was whether the CFI erred in applying the ruling in the Guido case. The High Tribunal sustained the judgment of the lower court in the following tenor:

"Since despite the fact that in the Guido case the land sought to be expropriated belonged to a single owner, said land having an aggregate area of 22,655 sq.m. it was ruled to be beyond CA 539, it is clear that the land in this case which is made up of several lots not contiguous to each other, owned by several persons and whose aggregate area is only 5,341 sq. m. and occupied by 47 tenants, is and cannot be, a large estate within the purview of the constitutional precept and CA 539."

It was urged that the ruling in the Guido case should be reconsidered, bearing in mind the 20th Century movement all over the world to improve the lot of the common people and the enlightened trends of governmental policy of most civilized nations, redistributing the wealth of the nation to the unfortunate common people classically known as the Have-Nots.

The Guido case has been reaffirmed in several cases already. It is enough to repeat that the Court did not intend to destroy private ownership nor redistribute the nation's wealth to Have-Nots; on the contrary, it recognizes and protects private ownership. Except in instances specifically enumerated by the Constitution, no private individual may be deprived of his property even by the government because the individual is not made for the State and what he owns cannot be claimed by the State.

It is further argued that CA 539 is, in view of its object and purpose, a political question of the government, the necessity and expediency of which, cannot be the subject of judicial

inquiry. The Courts do not question the necessity and expediency of that piece of legislation; they merely hold that it applies only to land which, under the Constitution, Congress could expropriate for resale to individuals. Furthermore, a law that attempts to deprive a landowner of his private property without his consent, does not merely raise a political question beyond the jurisdiction of the Courts. The individual has a right to seek protection of the Judiciary whenever his rights of ownership are invaded without constitutional authority, even when such invasion is committed by the agents of government.

Paulino Carreon

WILLS AND SUCCESSION—Revocation of Will—Second Will Must Be Valid to Revoke a Prior Will—Appeal from an order of the CFI of Rizal admiting to probate the last will and testament of the deceased Mariano Molo y Legaspi executed on August 17, 1918.

Mariano Molo y Legaspi died on January 24, 1941, without leaving any forced heir either in the descending or ascending line. He was survived, however, by his wife, the herein petitioner Juana Juan Vda. de Molo, and by his nieces and nephew, oppositors-appellants, children of Candido Molo y Legaspi, deceased brother of the testator. Mariano Molo y Legaspi left two wills, one executed on August 17, 1918, and another executed on June 20, 1939. The latter will contains a clause which expressly revokes the will executed in 1918.

On February 7, 1941, Juana Juan Vda. de Molo filed in the CFI of Rizal a petition, seeking the probate of the will executed by the deceased on June 20, 1939. After hearing, the court rendered decision denying the probate of said will on the ground that the petitioner failed to prove that the same was executed in accordance with law.

In view of the disallowance of the will executed on June 20, 1939, the widow on February 24, 1944, filed another petition for the probate of the will executed by the deceased on August 17, 1918. The same oppositors filed an opposition to the petition based on the ground that the will has been subsequently revoked. After trial, the court on May 28, 1948, issued an order admitting the will to probate. From this order the oppositors appealed assigning six errors, most important of which is that the lower court erred in not holding that Molo's will of 1918 was subsequently revoked by the decedent will of 1939.

Held: A subsequent will in order to revoke a prior valid will must in itself be a valid will. If the subsequent revoking will is defective, even if the earlier will was destroyed by the testator in the honest belief that it was no longer necessary, it is our opinion that the earlier will can still be admitted to probate under the principle of "dependent relative revocation".

The doctrine of dependent relative revocation simply means that "where the act of destruction is connected with the making of another will so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, the revocation will be conditional and dependent upon the efficacy of the new disposition; and if, for any reason, the new will intended to be made as a substitute is inoperative, the revocation fails and the original will remains in full force." (*Gardner, pp.* 232-233; *Juana Juan Vda. de Molo vs. Molo, G.R. No. L-*2538, *Sept.* 21, 1951.)

This case reiterates the doctrine laid down in an earlier case which held that "a subsequent will, containing a clause revoking a previous will, having been disallowed, for the reason that it was not executed in conformity with the provisions of section 618 of the Code of Civil Procedure (now Art. 805, Civil Code) as to the making of wills cannot produce the effect of annulling the previous will, inasmuch as said revocatory clause is void." (*Samson vs. Naval,* 41 *Phil.* 838.)

Filemon Flores

BOOK REVIEWS

The King's Good Servant. Papers Read to the Thomas More Society of London. Richard O'Sullivan, K.C. Basil Blackwell, Oxford, 1948. Pp. 112.

"Thomas More, saint and lawyer." It is to be expected that the ordinary man would read such phrase with wonderment, in the light of the present day opinion of lawyers as men whose profession prevents, if not forbids, them to lead the saintly life. But the Thomas More was no ordinary man; and so were countless lawyers after him. That "saint and lawyer" could be read together, Sir Thomas More proved to the world, and for this he suffered the supreme sacrifice. And with the passing of the years, great men have come to recognize and embrace all that Thomas More, saint and genuis, stood for. Some have written on his life; others have written on the basis of his philosophy. Of the latter type, comes the *"King's Good Servant"*. The title