MIDNIGHT APPOINTMENTS IN THE LIGHT OF DAY

In the short span of a little over four years, the Supreme Court of the Philippines passed two important resolutions disposing of controversies involving what are popularly known as "midnight" appointments. The first resolution, which was adapted without prejudice to the promulgation of a more extended opinion (which never came), denied the petition of Mr. Dominador Aytona to prohibit Mr. Andres Castillo from holding the office of Governor of the Central Bank.[1] The second resolution, made on February 16, 1966 and explained in a later decision penned by Justice Felix Bautista Angelo, dismissed the petition for *quo warranto* filed by Mr. Onofre Guevara against Mr. Raoul Inocentes.[2] In both cases, the main problem faced by the Court was how to dispose of the appointments made by the out-going president at the end of his term and uphold the right of the new president to make appointments of his own choice. Today the issues discussed in those resolutions no longer excite passions; it is now safe to take a second look at them with a view to examining the rulings and their contribution to Philippine jurisprudence.

The two controversies had parallel beginnings. In the first case, Mr. Dominador Aytona claimed to be entitled to the office of Governor of the Central Bank because, upon being appointed thereto by President Carlos Garcia, he took his oath of office on December 29, 1961, three days before Mr. Andres Castillo was appointed to and qualified for the same office on January 1, 1962. Mr. Onofre Guevara, in the second controversy, challenged the right of Mr. Raoul Inocentes to hold the office of Undersecretary of Labor because he (Guevara) claimed to be the legal holder thereof since he was appointed to that office on November 18, 1965, and he took his oath on November 25 of the same year. Mr. Raoul Inocentes, on the other hand, was appointed to the same office only on January 23, 1966 by the new president, Ferdinand Marcos. It is clear that both the appointment of Aytona and the appointment of Guevara were made by the outgoing presidents after they had lost their bids for re-election and towards the end of their respective terms. Understandably, both appointments were not welcomed by the in-coming presidents.

From this point, however, the two controversies began to part ways. In the face of Aytona's appointment, which was

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[1] Aytona v. Castillo, G.R. No. L-19313, January 20, 1962.

[2] Guevara v. Inocentes, G.R. No. L-25577, March 16, 1966.

among the three hundred and fifty appointments made by President Garcia on December 29, 1961, President Macapagal issued Administrative Order No. 2 which recalled, withdrew and cancelled all *ad interim* appointments extended or released by President Garcia after the joint session of Congress which ended on December 13, 1961 during which Mr. Macapagal was declared elected president in the 1961 national elections. Four years later, President Marcos, however, did not make any order similar to that issued by President Macapagal but instead issued Proclamation No. 2, series of 1966, which called Congress to a special session prior to its regular session which started on January 24, 1966. When Congress failed to organize the Commission on Appointments during the special session, President Marcos issued Memorandum Circular No. 8 declaring that all *ad interim* appointments made by President Macapagal had lapsed with the adjournment of the special session at about the midnight of January 22, 1966.

President Macapagal issued the appointment of Mr. Andres Castillo after the promulgation of Administrative Order No. 2; President Marcos appointed Mr. Raoul Inocentes as Undersecretary of Labor after the issuance of Memorandum Circular No. 8. Because of the different nature of the events that preceeded the respective appointments, the immediate issues in the two cases contesting the appointees' right to hold office differed. The real issue in the *Aytona* case was "whether the new president had power to issue the order of cancellation of the *ad interim* appointments made by the past president, even after the appointees had already qualified;" [3] the central question in the *Guevara* case was whether or not the appointments made by the past president lapsed with the termination of the special session during which Congress failed to organize the Commission on Appointments. The resolution of these issues necessitated the examination of the pertinent Constitutional provision.

Article VII, Section 10, Subsection 4 of the Constitution of the Philippines reads as follows:

> The President shall have the power to make appointments during the recess of Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of Congress.

It is evident that a number of questions may be asked of this provision: (1) Up to what time is the President authorized to issue *ad interim* appointments? May he make such appointments

[3] Aytona v. Castillo, *supra* note 1.

just before he relinquishes the Presidency? (2) How are the causes for the termination of the *ad interim* appointments to be taken? Is the disapproval by the Commission on Appointments separate and distinct from the adjournment of Congress? This note shall try to elicit the Court's position on these questions by examining the rules laid down in the *Aytona* and *Guevara* resolutions.

The questions posed in the *Aytona* case revolved on the question of whether or not President Garcia, just before the termination of his term of office, had the legal right to exercise the power granted by the above-mentioned provision of the Constitution. The Supreme Court, in answer to the question, wrote as follows:

> Of course, nobody will assert that President Garcia ceased to be such earlier than at noon of December 30, 1961. But it is common sense to believe that after the proclamation of the election of President Macapagal his was no more than a "caretaker" administration. He was duty bound to prepare for the orderly transfer of authority to the incoming President, and he should not do acts which, he ought to know, would embarass or obstruct the policies of his successor . . . The filling up of vacancies in important positions, if few, and spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualification may undoubtedly be permitted. But the issuance of 350 appointments in one night and the planned induction of almost all of them a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of Presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make the corresponding appointments.[4]

In other words, the Court held that President Garcia, by the mere fact that his term of office was about to end in a few hours, did not lose the legal right to issue *ad interim* appointments. He was still President of the Philippines up to mid-day of December 30, 1961. He had all the rights and prerogatives which the Constitution grants to the Chief Executive. Consequently, he could have made *ad interim* appointments which were "so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualification."[5] There is no question that he had the legal power to make *ad interim* appointments. But "common sense" dictated that he was a mere "care-taker" of the govern-

[4] *Ibid.*

[5] *Ibid.*

ment. Therefore, his exercise of his presidential powers should have been in conformity with the conduct and behavior of a good care-taker. The circumstances which surrounded the three hundred and fifty appointments made on December 29, 1961 showed that he did not act as a good care-taker. The Court observed:

> There is evidence that in the night of December 29, there was a scramble in Malacañan of candidates for positions trying to get their written appointments or having such appointments changed to more convenient places, after some last minute bargaining. There was unusual hurry in the issuance of the appointments — which were not coursed through the Department Heads — and in the confusion, a woman appointed judge was designated "Mr." and a man was designated "Madam." One appointee who got his appointment and was required to qualify resorted to the ruse of asking permission to swear before a relative official, and then never qualified. [6]

After several other like observations, the Court held:

> Under the circumstances above described, what with the separation of powers, this Court resolves that it must decline to disregard the Presidential Administrative Order No. 2, cancelling such "midnight" or "last-minute" appointments. [7]

Hence, it is clear that the Supreme Court did not consider the midnight appointments illegal. However, there are strong indications to support the view that the Court considered the appointments inequitable.

This tenor of the *Aytona* resolution was not very well understood in the days that immediately followed its promulgation. The first attempt to clarify it was made by the Supreme Court in another resolution on March 30, 1962 dealing with the "plea of intervenor Perfecto Querubin in behalf of himself and other so-called midnight appointees for a declaration of their rights, if any, to hold, or to return to, the offices they held prior to their last minute appointments." [8] The Court held:

> In the first place, it must be explained that the resolution of the majority in this case (*Aytona* case) has not specifically declared the "midnight" appointments to be void. The resolution in substance held that the Court *had doubts* about their validity and having due regard to the separation of powers and the surrounding circumstances, it declined to overthrow the executive order of cancellation and to grant relief.

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[6] *Ibid.*
[7] *Ibid.*
[8] G.R. No. L-19313, March 30, 1962.

> In the second place, the court must emphasize that no exact precedent controlled the situation (350 appointments in a single night, etc.).[8] So it adopted such ruling as it believed to be just and equitable in the premises.
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> Now, in resolving the issue tendered by the intervenor, the *court must again consider the circumstances and equities of the situation.*[9] (Emphasis supplied).

Likewise, in deciding the numerous cases that came in the wake of the Aytona decision involving the same issue, the Court uniformly applied the standard of equity.

In the case of *Merrera v. Liwag,*[10] the Court considered the facts surrounding the petitioner's appointment to the position of Auxiliary Justice of the Peace and concluded that since there was "deliberate action and careful consideration on the part of the appointing power, and the petitioner appointed qualified and entered upon the discharge of his official functions days before the 'scramble' in Malacañan,"[11] his appointment did not fall within the ruling of the *Aytona* case. The Court was of the opinion that the circumstances attending Merrera's appointment "comes squarely within the qualification of the Aytona ruling,"[12] namely, "the filling up of vacancies in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted."[13]

Based on a contrary set of circumstances was the decision in *Rodriguez v. Quirino.*[14] Rodriguez's *ad interim* appointment as Director of Public Libraries was dated June 1, 1961 but was not communicated to him until December 30 of the same year. Actually, his appointment was submitted to the Commission on Appointments in a letter sent by the President dated December 26, 1961 but was received by the Commission only on December 29, 1961. The Court maintained:

> It can be inferred from his secrecy that the appointing power did not desire to make the selection final and operative until the last day of President Garcia's term. Consequently, this petitioner's appointment should be regarded as part and parcel of the 300 and more "midnight" appointments referred to in our decision in Aytona vs. Castillo, G.R.

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[9] *Ibid.*
[10] G.R. No. L-20079, September 30, 1963.
[11] *Ibid.*
[12] *Ibid.*
[13] Aytona v. Castillo, *supra* note 1.
[14] G.R. No. L-19800, October 28, 1963.

No. L-12313, and is covered by the rule laid down therein.[15]

Similarly situated was Conrado Siguente who was appointed as Justice of the Peace of Balimbing, Sulu. His appointment was dated May 19, 1961 but was never released from Malacañan nor delivered to him. His name, however, was included in a letter submitted by President Garcia to the Commission on Appointments on December 26, 1961. The appointment was confirmed on May 3, 1962 and he took his oath thirteen days later when he learned of the confirmation. Accordingly, the Court considered his appointment as recalled by President Macapagal's revoking order.[16]

In the case of *Ronquillo v. Galano*,[17] the Supreme Court need not have passed on the irregular circumstances surrounding the petitioner's appointment. Nevertheless, the Court, aside from noting that when the petitioner took his oath of office the office he had been appointed to was still occupied by the incumbent, maintained that Ronquillo's appointment as Justice of the Peace of Maripipi was irregular. The Court observed:

> It also appears from the petition that petitioner, who is a resident of Maripipi, Leyte had to make a trip to Manila on December 29, 1961 just to take his oath of office instead of waiting for the receipt of his appointment in the ordinary course of mail in ordinary cases. Under the above circumstances, we are forced to find, as we hereby declare, that his appointment falls under the principle and theory of the case of Aytona . . .[18]

The third case which was decided by the Supreme Court on the same day as the two preceding cases was also decided in the same way. In *Valer v. Briones*,[19] the Court, after finding that petitioner's appointment as member of the Board of Directors of the Abaca Corporation of the Philippines was not released until December 29 or 30, 1961, held that the appointment fell within the purview of the decision on the *Aytona* case.

In spite of the three November cases decided against the *ad interim* appointments of President Garcia, the Supreme Court did not hesitate to uphold those which did not bear any taint of the irregularities found in the December 29 appointments. In *Soreño v. Secretary of Justice*,[20] the appointment of the petitioner

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[15] *Ibid.*

[16] Siguiente v. Secretary of Justice, G.R. No. L-20870, November 29, 1963.

[17] G.R. No. L-21117, November 29, 1963.

[18] *Ibid.*

[19] G.R. No. L-20033, November 29, 1963.

[20] G.R. No. L-20272, December 27, 1963.

as Justice of the Peace of Vallehermoso, Negros Oriental, was not considered withdrawn by the Administrative Order No. 2 of President Macapagal because the Court found nothing irregular in the appointment. The Court, clearly emphasizing the basis of its decision, held:

> The regularity of the appointment and the fact of its transmission through channels to the petitioner in the ordinary course of official business attest to the regularity thereof and the absence of any of the irregularities and special circumstances attending the so-called midnight appointments confirm such regularity. The presumption of regularity attends the appointment, hence it may not be considered affected by the Administrative Order No. 2 of President Macapagal . . .
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> Besides, when the administrative order was promulgated on December 31, 1961, the petitioner had already taken the oath also taking place regularly, without the haste and consequent irregularity of the midnight appointments. [21]

Another appointment which was upheld on the basis of the circumstances showing no irregularity was that extended to Socorro Gillera as Member of the Board of Pharmaceutical Examiners. [22] The Court held:

> In the instant case, even the new President recognized the need for the immediate filling of the position of Members of the Board of Pharmaceutical Examiners, in view of the examiners, in view of the examinations that were given on January 2, 3, 4, and 7, 1962, that he (the President) saw it fit, "as a matter of emergency in order not to disrupt public service" to "designate" petitioner herself to the same position to which she was previously appointed and had qualified. There is also no allegation that petitioner is not qualified to the said office, or that her appointment was one of those attended by the "mad scramble in Malacañan" in the evening of December 29, 1961 . . . Clearly, it cannot be said that in the instant case, petitioner's appointment was not the result of deliberate action, considering her qualification and the exigency of the service. [23]

The appointment of Nicanor Jorge to the position of Director of the Bureau of Lands was also upheld. [24] He was a career official in the government service and had been working with the Bureau for thirty eight years. He qualified on December 23, 1961, and his appointment was transmitted to the Commission

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[21] *Ibid.*

[22] Gillera v. Fernandez, G.R. No. L-20751, January 31, 1964.

[23] *Ibid.*

[24] Jorge v. Mayor, G.R. No. L-21776, February 28, 1964.

on Appointments on December 26, 1961. The Court very clearly stated:

> There is certainly no parity between the appointment of petitioner on December 13, 1961 and the confused scramble for appointments in and during the days immediately preceding the inauguration of the present administration. For ought that appears on the record before us, the appointment of petitioner Jorge was the only one made in that day, and there is nothing to show that it was not—
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> > "so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications"
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> that could be validly made even by an outgoing President under the Aytona ruling . . .[25]

In the same vein was the decision in the case of *Quimsing v. Tajanlangit.*[26] The Court held:

> In the present case, petitioner Quimsing admittedly had been occupying the position in controversy, in an acting capacity since May 20, 1960, and discharging the functions thereof. . . . The *ad interim* appointment of petitioner, whose qualification is not in dispute with the regularity of which is not questioned except for the fact that it was made only on December 20, 1961 cannot be considered as among those midnight appointments the validity of which this Court declared to be, at least, doubtful to entitle the appointees to the equitable relief of *quo warranto.*[27]

Hence, by the year 1965, there were sufficient cases from which the position of the Court on midnight appointments can be inferred. The operation of Administrative Order No. 2 was affirmed or denied depending on the circumstances that surrounded each particular appointment. If the appointment was tainted by the "scramble in Malacañan," it was considered withdrawn. If the appointment was well-considered, it was held to be unaffected by the Administrative Order. In the case of *Morales v. Patriarca,*[28] although the Supreme Court could have disposed of the case simply by noting that the action of Morales was filed more than one year after his removal from the office of Justice of the Peace of San Andres, Quezon, and was therefore barred by the statute of limitations, the Court took occasion to mention the specific circumstances which, among others, operated to take out the appointment from the purview of Administrative Order No. 2. The Court observed:

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[25] *Ibid.*

[26] G.R. No. L-19981, February 29, 1964.

[27] *Ibid.*

[28] G.R. No. L-21280, April 30, 1965.

> From the decisions of this court in the wake of the *Aytona* ruling, it is clear that petitioner's appointment was not a midnight appointment. The same was extended on November 6, 1961 even before election day, indicating deliberate and careful action (Merrera vs. Liwag, L-20079, September 30, 1963). Petitioner took his oath on December 28, 1961, before the "scramble" in Malacañan that started in the evening of December 29, 1961 (Gillera vs. Fernandez, L-20741, January 31, 1964). No haste and irregularity, therefore attended petitioner's appointment, and he took his oath days before the promulgation, on December 31, 1961 of Administrative Order No. 2 (Soreño vs. Secretary of Justice, L-20272, December 27, 1963).[29]

The subsequent cases merely reiterated what had already been settled. Thus, the case of *Cabiling v. Pabualan*[30] was readily decided against the *ad interim* appointments because the Court found circumstances of haste and suspicion. The Court held:

> It is not disputed that the *ad interim* appointments extended in favor of appellees were signed by President Garcia only on December 25, 1961 and that they were among the several hundred similar appointments forwarded by the Office of the President to the Commission on Appointments on December 26, 1961. This being so, appellees' appointments should be regarded as an integral part of the so-called "midnight appointments" voided by our decision in the *Aytona* case.[31]

Likewise, the Court had no difficulty in reaching its verdict on the *Escuerte v. Jampayas*[32] case. The petitioners were appointed to the positions of mayor, vice mayor, and councilor towards the end of December 1961. Their appointments were actually processed on December 25, 1961, and transmitted to the Commission on Appointments on December 29, 1961. Hence. "it is clear that it was part of the 350 'midnight appointments' dealt with in the Aytona-Castillo decision."[33]

The last case decided removed all doubts on the norm applied by the Court in considering the *ad interim* appointments. Up to the *Escuerte* decision, not one of the appointments released on December 29, 1961 was upheld by the Supreme Court. It was not therefore unreasonable to believe that all those released on December 29 fell under the operation of the Administrative Order No. 2. The Supreme Court, in deciding the *Sison v. Gimenez*[34]

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[29] *Ibid.*
[30] G.R. Nos. L-21764-65, May 31, 1965.
[31] *Ibid.*
[32] G.R. No. L-23301, February 28, 1966.
[33] *Ibid.*
[34] G.R. No. L-21195, May 31, 1966.

case made it very clear that it was not the date of the release of the appointment that was the determinative factor; it was the existence or non-existence or irregularity in the appointment. The Court held:

> In the case at bar, appellee's appointment to the position was recommended by the then Senate President Rodriguez, as President of the Nacionalista Party, before December 13, 1961, specifically on December 7, 1961 in strict compliance with the specific provisions of Section 21b of the Revised Election Code. *Although the appointment was released only on December* 29, 1961, *it cannot be viewed as one of those "rush appointments" attended by "hurried maneuvers and other happenings" which were the objectionable features of the appointments declared irregular by the Aytona ruling.* It cannot also be charged that the appointment in dispute lacked the presidential deliberation on and consideration of appellee's qualifications and suitability. As a matter of fact, she was extended another appointment to the same position by the very President who had issued the proclamation which is now the basis of appellant's denial of the claim of the appellee. As Mrs. Sison had immediately qualified to and discharged the basis of her valid *ad interim* appointment which is *free from all taint* of irregularity envisioned in the Aytona case, she is entitled to the rights and privileges appertaining thereto.[35] (Emphasis supplied)

It is therefore clear from this brief examination of the *Aytona* ruling and the subsequent cases that the question of whether an appointment made by President Garcia at the end of his term was to be upheld or not depended on the particular circumstances that accompanied the appointment in question. The determinative factor was the presence of irregularities in the appointment. If the appointment was well-considered and the appointee was duly qualified for and needed by the service, then the Court did not hesitate to take it out of the revoking scope of the Administrative Order No. 2 of President Macapagal. If, on the other hand, the appointment was tainted by circumstances that showed undue haste and suspicious maneuvers, then the Court considered it recalled by the said Administrative order. In all instances, the Court tried to render what was just and equitable under the circumstances.

The main objection of the Court to the midnight appointments was, therefore, not that they were made without legal authority, for they were, but that they were made against the principles of equity. That fact alone is sufficient to enable the President to recall them even after the appointees have qualified for their offices. It must be remembered that the Supreme Court

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[35] *Ibid.*

did not say that Administrative Order No. 2 was valid. Neither did the Court say it was invalid. Instead, the Court simply saw itself in such a position that "it must decline to disregard the Presidential Administrative Order No. 2 cancelling such 'midnight' or 'last minute' appointments." Instead of meeting the issue of the Order's validity, the Court chose to decide the case on the basis of two collateral grounds: (1) the circumstances accompanying the three hundred and fifty appointments, and (2) the principle of the separation of powers. It is clear, however, by the first reason, that the Supreme Court recognized a qualification to the well-established rule of irrevocability of appointments. It held:

> Of course, the Court is aware of many precedents to the effect that once an appointment has been issued, it cannot be reconsidered, specially where the appointee has qualified. But none of them refer to mass *ad interim* appointments (three hundred and fifty), issued in the last hours of an outgoing Chief Executive, in a setting similar to that outlined herein. On the other hand, the authorities admit of exceptional circumstances justifying revocation; and if any circumstances justify revocation, those described herein should fit the exception. [35]

President Macapagal, therefore, did have a right, inspite of the absence of any constitutional or statutory provision to that effect, to revoke the irregular *ad interim* appointments. Equity was the basis of his right.

By way of complementary argument, the Court invoked the principle of separation of powers to justify its refusal to interfere with Administrative Order No. 2. In so doing, however, it drew more criticism than praises. Many asked: If respect for the principle was reason enough for refusing interference with the Order, should it not have been also reason enough for refusing to inquire into the propriety of the midnight appointments? No less than Justice Roberto Concepcion, now the Chief Justice, criticized the Court's stand on the application of the principle. His concurring and dissenting opinion was a clear case of self-criticism when he said:

> In the present case, we have completely reversed our stand on the principle of separation of powers. We have inquired into the motives of the Executive department in making the appointments in question, although it is well-settled, under the aforementioned principle, that:

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[35] Aytona v. Castillo, *supra* note 1.

> Generally, courts cannot inquire into the motive, policy, wisdom or expediency of the legislative.
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> The justice, wisdom, policy or expediency of a law which is within its powers are for the legislature and are not open into inquiry by the courts, except as an aid to proper interpretation. (10 C.J.S. 471-478)
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> If this is true as regards the legislative branch of the government, I can see no valid reason, and none has been pointed out, why the same norm should not govern our relations with the executive department. However, we have not merely disregarded such norm. We are also, in effect, restraining the Commission on Appointments — an organ of a coordinate, co-equal branch of the Government — from acting on the questioned appointments. What is more, we are virtually assuming in advance that said body — which has not been organized as yet and whose membership is still undetermined — will not act in harmony with the spirit of our Constitution. [37]

Senator Arturo Tolentino was also direct and pointed in his criticism. On the floor of the Senate, he said:

> But since when, in the annals of jurisprudence, has the propriety of a constitutional act of a co-equal and independent branch of the Government ever been questioned by a Supreme Court? Remembering and invoking the principle of separation of powers the Supreme Court declined to disregard Administrative Order No. 2 of President Macapagal recalling 350 appointments made by President Garcia, although the power to appoint is clearly vested by the Constitution in the President,—and Mr. Garcia exercised the constitutional prerogative, — while the power to recall or revoke the appointments is nowhere to be found in the Constitution and its questionable existence as an exception is not even supported by strong jurisprudence. [38]

The fact remains, however, that the Supreme Court did invoke the principle of separation of powers. The Aytona resolution therefore stands as an authority, although a questioned one, for the proposition the Supreme Court will not interfere with the order of the new Chief Executive revoking *ad interim* appointments of the previous Chief Executive if such *ad interim* appointments appear to the Court as clearly inequitable.

In 1966, therefore, President Ferdinand Marcos could have successfully revoked the *ad interim* appointments issued by President Macapagal at the later portion of the latter's term by simply issuing an order similar in import to Administrative Order No. 2 of his predecessor. Instead, however, he called for a special

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[37] *Ibid.*

[38] *The Lawyers Journal*, April 30, 1962, 102.

session, and, as earlier related, waited for Congress to adjourn without organizing the Commission on Appointments. He did not recall the *ad interim* appointments of the previous administration; he simply considered them to have lapsed with the adjournment of congress in special session. As expected, such an action encountered opposition. Inevitably, the controversy reached the Highest Tribunal, and the Court had then the second occasion to pass on the proper interpretation of an aspect of Article VII, Section 10, Subsection 4 of the Philippine Constitution.

In the case of *Guevara v. Inocentes,*[39] brought precisely to test the presidential declaration, petitioner Guevara contended that in order for the adjournment of a session of Congress to operate as a mode of terminating *ad interim* appointments, the Commission on Appointments must first be organized. The Court, commenting on this contention, saw several reasons against the proposition: first, the pertinent constitutional provision, which is clearly and plainly worded, "contemplates two modes of termination of an *ad interim* appointment . . . which are completely separate and independent of each other;"[40] second, had the framers of the Constitution intended otherwise, "they should have so stated in clear terms considering that the first clause implies a positive act of the Commission while the second an entirely separate and independent act of Congress;"[41] and finally, the theory, if upheld, will result in the anomaly that *ad interim* appointments can be easily converted into permanent ones by the controlling party in Congress should that party refuse to organize the Commission on Appointments. For these reasons, the Court rejected the contention of the petitioner.

The further question may be asked: Granting that the adjournment of Congress is a mode of terminating *ad interim* appointments, is it to be considered as an implied exercise of the power of Legislature to check the appointments of the President? Or is its power to terminate *ad interim* appointments based on another legal ground?

The majority opinion answered the first question in the affirmative. The Court held:

> Under our tripartite form of government predicated on the principle of separation of powers the power to appoint is inherently an executive function while the power to confirm or reject appointments belongs to the legislative department, the latter power having been conferred as a check on the former. This power to check may

[39] G.R. No. L-25577, March 16, 1966.
[40] *Ibid.*
[41] *Ibid.*

> be exercised through the members of both Houses in the Commission on Appointments. But although the Commission on Appointments is provided for in the Constitution, its organization requires congressional action, and once organized, by express provision of the Constitution it "shall meet only while Congress is in session." Consequently, if for any reason Congress adjourns a regular or special session without organizing the Commission on Appointments, Congress should be deemed to have impliedly exercised said power to check by allowing the *ad interim* appointments to lapse as provided for in the Constitution. [42]

Justice Roberto Concepcion, however, had a different interpretation of the basis of the adjournment of Congress as a mode of terminating *ad interim* appointments. In his separate concurring opinion, he wrote:

> In short, an *ad interim* appointment ceases to be effective upon disapproval by the Commission, because the incumbent can not continue holding office over the *positive objection* of the Commission. It ceases, also, upon "the next adjournment of Congress," simply because the President can then issue new appointments — *not* because of implied disapproval of the Commission deduced from its inaction during the session of Congress, for, under the Constitution, the Commission may affect adversely the *ad interim* appointments *only* by *action*, *never* by *omission*. *If the adjournment of Congress were an implied disapproval of ad interim appointments made prior thereto, then the President could not longer appoint those so bypassed by the Commission.* But, *the fact is that the President may reappoint them*, thus clearly indicating that the reason for said termination of the *ad interim* appointments is not the disapproval thereof allegedly inferred from said *omission* of the Commission, but, the circumstance that, *upon said adjournment of the Congress, the President is free to make ad interim appointments or reappointments.* [43]

In direct answer to the argument of the majority, perhaps it may be said that if Congress cannot by an express act as a body disapprove an *ad interim* appointment of the President, much less can it disapprove the same appointment impliedly by the fact of adjournment.

Nevertheless, inspite of the divergent opinions on the *basis* of the adjournment's power to terminate *ad interim* appointments, the unanimous opinion is that adjournment of Congress *does* terminate *ad interim* appointments.

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[42] *Ibid.*
[43] *Ibid.*

The important rules arising out of the *Aytona* and *Guevara* resolutions may now be briefly formulated. According to the *Aytona* ruling and the subsequent decisions, the President, even up to the last moments of his term, has the power to make *ad interim* appointments. However, at such time, he may exercise such power only to prevent disruption in the operation of the government while the country waits for the coming of the new administration. Should he exercise that power simply to embarass the incoming President, principles of equity and fairness justify the revocation of *ad interim* appointments so made. The Supreme Court will therefore not interfere with any order of the incoming President that will withdraw such appointments even if the appointees have already taken their oath of office. Regular and necessary appointments, however, will not be included within the revoking scope of such an order.

The *Guevara* resolution, though theoretically larger in scope, is practically significant only concerning *ad interim* appointments of an out-going President. It categorically rules that *ad interim* appointments terminate upon disapproval by the Commission on Appointments, or upon the next adjournment of Congress. When Congress adjourns its session, whether special or regular, that act, standing all alone, terminates the *ad interim* appointments made prior to the session adjourned, notwithstanding the failure of Congress to organize the Commission on Appointments nor the inability of the latter to consider said appointments. Once Congress adjourns, all unconfirmed *ad interim* appointments lapse with the adjournment.

It was unfortunate that the clarification of Article VII, Section 10, Subsection 4 of the Philippine Constitution had to be given only after two Presidents had imprudently exercised the power it granted. Comparing the two occasions which triggered the two important decisions, the Court observed that "while President Garcia only extended 350 *ad interim* appointments after he had lost the election, President Macapagal made 1,717 *ad interim* appointments most of which were made only after the elections in November, 1965." [44] It was therefore an annoyed Court that issued this stern pronouncement:

> It is hoped that now and hereafter such excess in the exercise of power should be obviated to avoid confusion, uncertainty, embarrassment and chaos which may cause disruption in the normal function of government to the prejudice of public interest. It is time that such excess be stopped in the interest of the public wealth.[45]

REYNALDO G. GERONIMO

[44] *Ibid.*
[45] *Ibid.*

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-