LEGISLATION

RETAIL TRADE NATIONALIZATION ACT

Taking cognizance of the ever increasing hold which aliens have exercised on the retail business of the country, Congress in its last session passed Republic Act No. 1180, more popularly known as the "Nationalization of the Retail Trade Act."

This Act, calculated to halt the economic encroachment and control by aliens of the retail trade, was met by strong, solid opposition from the foreign business elements of the country, from its introduction in the House of Representatives to its final approval. The Chinese government in Taipeh, whose citizens in the Philippines stand to be the most adversely affected in point of numbers, by the approval of the measure, voiced in a series of diplomatic notes its displeasure over the action of our legislators.

Despite this determined opposition, the Act was passed by Congress and approved by the President. Because it stands today in our statute books as one of the most important laws of the country, Republic Act. No. 1180 is hereunder reproduced in its entirety.

THIRD CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES) H. No. 2523
First Session)

[REPUBLIC ACT No. 1180]

AN ACT TO REGULATE THE RETAIL BUSINESS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. No person who is not a citizen of the Philippines, and no association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business: *Provided*, That a person who is not a citizen of the Philippines, or an association, partnership, or corporation not wholly owned by citizens of the Philippines, which is actually engaged in the said business on May fifteen, nineteen hundred and fifty-four, shall be entitled to continue to engage therein, unless its license is forfeited in accordance herewith, until his death or voluntary retirement from said business, in the case of a natural person, and for a period of ten years from the date of the approval of this Act or until the expiration of the term of the association or partnership or of the corporate existence of the corporation, whichever event comes first, in the case of juridical persons. Failure to renew a license to engage in retail business shall be considered voluntary retirement.

Nothing contained in this Act shall in any way impair or abridge whatever rights may be granted to citizens and juridical entities of the United States of America under the Executive Agreement signed on July fourth, nineteen hundred and forty-six, between that country and the Republic of the Philippines.

The license of any person who is not a citizen of the Philippines and of any association, partnership or corporation not wholly owned by citizens of the Philippines to engage in retail business, shall be forfeited for any violation of any provision of laws on nationalization, economic control, weights and measures, and labor and other laws relating to trade, commerce and industry.

No license shall be issued to any person who is not a citizen of the Philippines and to any association, partnership or corporation not wholly owned by citizens of the Philippines, actually engaged in the retail business, to establish or open additional stores or branches for retail business.

SEC. 2. Every person who is not a citizen of the Philippines and every association, partnership or corporation not wholly owned by citizens of the Philippines, engaged in the retail business, shall, within ninety days after the approval of this Act and within the first fifteen days of January every year thereafter, present for registration with the municipal or city treasurer a verified statement containing the names, addresses,

and nationality of the owners, partners or stockholders, the nature of the retail business it is engaged in, the amount of its assets and liabilities, the names of its principal officials, and such other related data as may be required by the Secretary of Commerce and Industry.

SEC. 3. In case of death of a person who is not a citizen of the Philippines and who is entitled to engage in retail business under the provisions of this Act, his or her heir, administrator or executor is entitled to continue with such retail business only for the purpose of liquidation for a period of not more than six months after such death.

SEC. 4. As used in this Act, the term "retail business" shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:

(*a*) A manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos, or

(*b*) a farmer or agriculturist selling the product of his farm.

SEC. 5. Every license to engage in retail business issued in favor of any citizen of the Philippines or any association, partnership or corporation wholly owned by citizens of the Philippines shall be conclusive evidence of the ownership by such citizen, association, partnership or corporation of the business for which the license was issued, except as against the Government or the State.

SEC. 6. Any violation of this Act shall be punished by imprisonment for not less than three years and not more than five years and by a fine of not less than three thousand pesos and not more than five thousand pesos. In the case of associations, partnerships, or corporations, the penalty shall be imposed upon its partners, president, directors, manager, and other officers responsible for the violation. If the offender is not a citizen of the Philippines, he shall be deported immediately after service of sentence. If the offender is a public officer or employee, he shall, in addition to the penalty prescribed herein, be dismissed from the public service, perpetually disenfranchised, and perpetually disqualified from holding any public office.

SEC. 7. This Act shall take effect upon its approval.
Approved, June 19, 1954.

OPINIONS OF THE SECRETARY OF JUSTICE * ON REPUBLIC ACT No. 1180

OPINION No. 175 **

The second paragraph of Section 1 of Republic Act No. 1180 nationalizing the retail business in the Philippines provides:

> "Nothing contained in this Act shall in any way impair or abridge whatever rights may be granted to citizens and juridical entities of the United States of America under the Executive Agreement signed on July fourth nineteen hundred and forty-six, between that country and the Republic of the Philippines."

This provision is admittedly vague. It is certain that it does not refer to the so-called parity rights on the exploitation of natural resources and operation of public utilities stipulated in Article VII of the Executive Agreement, nor to the rights granted American citizens to be admitted and reside in the Philippines under certain conditions and limitations provided for in Article VI, for these rights are in no way affected by the Retail Trade Nationalization Act.

All are agreed that the saving clause in question has reference to the provisions of the fourth paragraph of Article X which reads:

> "4. If the President of the United States determines and proclaims, after consultation with the President of the Philippines, that the Philippines

* Hon. Pedro Tuason.

**Rendered on July 21, 1954 upon request of Hon. Raul S. Manglapus, Undersecretary of Foreign Affairs, for an *"opinion on the nature and extent of the exemptions granted American citizens and entities engaged in the retail trade under the second paragraph of Section 1 in the light of what seem to appear as peremptory provisions of Section 2 of said Republic Act No. 1180."*

> or any of its political subdivisions or the Philippine Government is in any manner discriminating against citizens of the United States or any form of United States business enterprise, then the President of the United States shall have the right to suspend the effectiveness of the whole or any portion of this agreement. If the President of the United States subsequently determines and proclaims, after consultation with the President of the Philippines, that the discrimination which was the basis for such suspension (a) has ceased, such suspension shall end; or (b) has not ceased after the lapse of a time determined by the President of the United States to be reasonable, then the President of the United States shall have the right to terminate this Agreement upon not less than six months' written notice."

It is interesting to note that the saving clause mentioned above was introduced as an amendment by Senator Cea, Chairman of the Senate Committee on Commerce and Industry to which the subject matter of the bill pertained.

But the foregoing conclusion—that Congress had in mind paragraph 4 of Article X—does not solve the question. The meaning and scope of the aforesaid saving clause still remains to be determined, and here is where the doubts in the minds of some arise. Was the saving clause a conditional statement, in the sense that it was subject to the contingency that American citizens were granted trade rights? In other words, was it the intent of Congress that if no such rights existed, the saving clause would be of no force and effect?

I do not think that the amendment was so intended. Every indication points to the idea that it was conceived and adopted with the definite object of excluding American citizens and business entities from the operation of the Act regardless of the nature, extent and force of the rights and obligations provided in the trade agreement.

The legislative intent is of course the paramount consideration in statutory construction. And where the statute is ambiguous, the intention of the legislature may be gathered not so much from what is written in the law as from the surrounding circumstances of its enactment and its motivations. Granting that the fourth paragraph of

Article X is not a positive commitment that American citizens and corporations would be allowed to engage in commerce on equal footing with Philippine citizens—a point which is immaterial and unnecessary to decide for the purpose of this opinion—it is a fact, of which the Congress must have been well aware, that the Government of the Philippines could not discriminate against American citizens in any business interprise without running the risk of the President of the United States suspending and eventually terminating the effectiveness of the Agreement. Article X, Paragraph 4, of this instrument, it will be observed, confers upon the President of the United States almost unlimited power and discretion on this score, when, in his judgment, the Philippines is in any manner discriminating against citizens of the United States in any form of business pursuit. Congress must have realized that Republic Act No. 1180 if applied to United States citizens would be regarded by the United States Government as a form of discrimination against them, as the American Embassy in its note to the Department of Foreign Affairs, copy of which accompanies your letter, intimated.

The fact that the second paragraph of Section 1 of Republic Act No. 1180 was an amendment strengthens the conviction that it was inserted to serve a concrete, practical purpose. Surely the Senate did not indulge in hypothetical assumptions when it took pain to incorporate this provision after the bill had passed the House. In the light of comtemporary events we are fully justified in assuming that the amendment was introduced to forestall the sure abrogation of the treaty with the United States if American citizens were barred from the retail business.

Whether we approve of it or not, whether we like it or not, the predominant sentiment in and out of Congress was and is for the revision and the extension of the life of the Executive Agreement as a vital necessity to our economy. Nothing, the Congress must have thought could be more disastrous to the projected negotiations along this line which presently occupy the attention of the executive and legislative branches of the Philippine Government. Would it have been consistent for the Congress to seek the revision and extension of the Executive Agreement

and at the same time commit overt acts that would invite its non-renewal or extinction?

With reference to the requirement of Section 2 of the Act for the registration with the municipal or city treasurer of every non-Philippine citizen or entity engaged in retail business, my opinion is that it does not apply to American citizens. Being a provision of general character, it must yield to the provision of the second paragraph of Section 1 of which it is an implementation. By necessary implication, Section 2 subjects to registration only those persons, corporations and associations who come under the purview of Section 1.

In conclusion, I agree with the position taken by your Department that American citizens and juridical entities are exempted from the provisions of Republic Act No. 1180, and I have the honor to inform you accordingly.

OPINION No. 248 *

This law nationalizes the retail trade in the Philippines. Section 1 thereof provides that "no person who is not a citizen of the Philippines, and no association, partnership or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business," without prejudice to the right of non-Philippine citizens and entities actually engaged in said business as of May 15, 1954, to continue to engage therein until the happening of any of the contingencies mentioned in the Act. And Section 4 defines "retail business" as—

"any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:

"(a) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos, or

"(b) a farmer or agriculturist selling the product of his farm."

* Rendered on September 22, 1954 in reply to a request by Hon. Perfecto Laguio, Undersecretary of Commerce and Industry, for an opinion *"on whether or not drugstores, restaurants and panciterias are covered by Republic Act No. 1180."*

Retail business as thus defined involves the elements of (1) habitual act (2) of selling merchandise, commodities and goods (3) direct to the general public for consumption, as distinguished from sales to merchants and dealers for resale. Excepted are manufacturers, processors, laborers or workers selling to the public the products they manufacture, process or produce, if their capital does not exceed five thousand pesos, and farmers and agriculturists selling the products of their farm.

The term *"commodity"* connotes an article of trade, a movable article of value; something that is bought and sold (*United States v. Sische, D.C. Wash.*, 262 *F.* 1001, 1005); while the word *"merchandise"* covers all articles of commerce, including *medicines* and *drugs* (*State v. Holmes*, 28 *La. Ann.* 765, 26 *Am. Rep.* 110; *Bouvier's Law Dictionary, 3rd Revision, Vol.* 2, p. 2195).

Hence, if by *drugstore* referred to in the query, you mean those that compound, dispense and sell medicines and drugs in small quantities to the general public for use and consumption, my opinion is that their trade constitutes retail business in contemplation of the Act. Indeed, a drugtore is defined as a store, a shop or other place of business where drugs, medicines or poisons are compounded, dispensed or sold at retail (*19 C. J.* 790). The term, it has been held, has acquired a common acceptation as a retail store as distinguished from a wholesale establishment (28 C. J. S. 497, *citing Mobley v. Brown*, 2 *P2d.* 1034, 151 *Okl.* 167).

Restaurants and *panciterias* would fall under the statute if (1) the serving of food in these establishments amounts to a sale, and (2) the operators thereof are not "manu-

facturers" or processors" as understood in the exemption clause of the cited provision of the Act.

That a sale takes place in every serving of food to a customer in a restaurant does not seem to be in doubt. The business of a restaurateur, as said in a case, resembles more nearly that of a storekeeper who sells wares to the public, which is invited to come and buy or decline to buy what is offered for sale (*Davidson v. Chinese Republic Restaurant Co.,* 201 *Mich.* 389, 167 *NW* 967). "The eating of food by a customer at a restaurant, in the regular course of business, involves a sale of the food eaten" (*City of San Francisco v. Larsen,* 165 *Cal.* 179, 131 *P.* 366). See also, Brevoort Hotel Co. v. Ames, 360 Ill. 485, 196 NE 461 and O'Neil v. Dept. of Finance, 360 Ill. 484, 196 NE 463, where restaurant keepers were held "engaged in the business of selling tangible personal property at retail" within the meaning of the Retailers' Occupation Tax Act.

A "manufacturer" is one who makes materials, raw or partly finished, into wares suitable for use; one who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process; or one who by labor, art, or skill transforms raw materials into some kind of a finished product or article of trade (55 *C.J.S.* 672, 673). A restaurant is not, primarily, or according to the ordinary habit of speech, a place where the business of manufacturing goods, wares or merchandise is carried on (*City of San Francisco v. Larsen, supra*); hence, a cook or a restaurant keeper is not, by ordinary usage, a manufacturer (*In re Wentworth Lunch Co.,* 159 *F.* 413). "Even though by mixing ingredients and cooking them, he produces a different article, he is not a manufacturer in any true sense of the word." (*New Orleans v. Mannessier,* 32 *La. Ann.* 1075, 26 *Cyc.* 521; *Correie v. Lynch,* 65, *Cal.* 273, 3 *P.* 898.)

But cooking, I believe, is processing, and a restaurant keeper is a processor in contemplation of the statute. Process means "to subject to some special process or treatment. Specif.: (a) to heat, as fruit, with steam under pressure, so as to cook or sterilize. (b) to subject (esp. raw material) to a process of manufacture, development, preparation for the market, *etc.;* to convert into marketable form, as

livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and repacking." (*Webster's Int. Dict., quoted in Colbert Mill & Food Co. v. Oklahoma Tax Commission,* 109 *P2d.* 504). It is a mode of treatment of certain materials to produce a given result; an act, or a series of acts, performed upon the subject matter to be transformed and reduced to a different state or thing (*Waldam v. Swanfeldt,* 66 *F2d.* 294; *Vegetable Oil Products Co. v. Derward & Sons,* 53 *F. Supp.* 281); or a series of steps involving physical or chemical changes in the material operated upon, and converts the material into something of different physical and chemical characteristics (*New Process Fat Refining Corp. v. W. C. Hardesty Co.,* 30 *F. Supp.* 292).

Cooking falls under the foregoing definitions in the sense that raw provisions are made to undergo a series of acts or steps and transformed into the cooked food—a marketable commodity differing, physically and chemically, from those of its ingredients. To illustrate, in cooking a dish of meat and vegetable soup, the raw meat and vegetables are cleaned, sliced, mixed together, heated or boiled with water and fat, and seasoned; and the cooked food possesses physical and chemical characteristics different from those of the ingredients that make up the dish.

In conclusion, therefore, my opinion is that drugstores are covered by Republic Act. No. 1180, while restaurants and *panciterias* with a capital of not exceeding five thousand pesos are not.

OPINION No. 253*

The Shell Company, which has been doing business in the Philippines for many years, imports gasoline, fuel and

* Rendered on September 24, 1954, upon request of Hon. Oscar Ledesma, Secretary of Commerce and Industry, for an opinion as to *"whether the Shell Company of the Philippines should be considered as engaged in the retail business within the purview of the Act, so that it must register as a retailer under the provisions of section two thereof."*

lubricating oil into the Philippines. More than 50% of its gross business is derived from direct sales of gasoline and fuel oil to large buyers, such as sugar centrals, airline companies, interisland and ocean-going vessels, manufacturing plants, *etc.,* who need supplies in large quantities for their own consumption. These large buyers are charged wholesale prices by the Shell Company who delivers the products to their premises by road tank lorries, rail tank cars, barges, *etc.* These sales are made directly by the Shell Company and not through distributors because the latter are neither in a position to quote the low prices which such big orders justify, nor do they have the equipment which is required to handle large supplies.

The Shell Company also sells fuel oil at wholesale prices to fishing vessels in practically the same manner that retail service stations sell gasoline and lubricating oil to land vehicles. In Manila, the Company sells fuel oil to fishing vessels from a converted LCM; in Cebu, it has a jetty where fishing vessels can tie up and have fuel oil piped directly to them; and in Iloilo, it has a jetty similar to that in Cebu and also a lighter barge, both of which are used to supply fuel oil to fishing vessels.

Another activity of the Shell Company, which is not revelant to the query, consists in selling its products at wholesale to independent retailers who own or operate gasoline stations and who in turn resell the products for their own account to the ultimate small consumer.

The term *retail business* is defined in Republic Act No. 1180, as follows:

> "Sec. 4. As used in this Act, the term 'retail business', shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:
>
> "(a) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos, or
>
> "(b) a farmer or agriculturist selling the product of his farm."

It can thus be seen that to constitute a retail business under the Act, the following requisites must be present: (a) habitually selling merchandise, commodities or goods, (b) direct to the general public, and (c) for consumption.

Although the Shell Company habitually sells its products direct to large buyers for their own consumption and does not fall under the exceptions provided in the law, it claims that it should not be considered as engaged in the retail business because it does not sell to the "general public". It contends that by "general public", Congress meant the house-owner or members of his family who buy merchandise, commodities or goods for their personal consumption; and that as used in the Act, "general public" does not include the manufacturer who needs quantities of fuel oil to run his plant, or the public utility operator who needs big quantities to propel ships, buses, and airlines. The Shell Company also contends that the history of the Act shows that those responsible for its passage were primarily concerned with the alien retailer who runs a shop, *tienda,* or *sari-sari* store.

It would seem, however, that the Shell Company's customers are no less the "general public", although they buy its products in bulk, in view of the fact that it sells said products indiscriminately to the public. The company itself states that every consumer is a potential customer; and that since the end-users to whom bulk sales are made include electric light companies, bus companies, shipping companies, all manufacturing companies, mining companies, sugar centrals, agriculturists, *etc.,* it is impossible to give their number.

As to the contention that by "general public" Congress meant only the house-owner or members of his family who buy merchandise, commodities or goods for their personal consumption, and not the manufacturer or public utility operator who buys quantities of fuel oil for his business, an examination of the explanatory note to H. No. 2523, which eventually became Republic Act. No. 1180, the preceedings in Congress in connection therewith, and the

Act itself, do not show that Congress intended to give to the term "general public" the restricted meaning which the Shell Company would attribute to it. On the contrary, retailing to the general public involves any kind of selling to consumers, of goods or merchandise, whether for personal consumption or for business purposes. In fact even sale of fish to a hotel by a vender in a public market was held a sale at retail (*Buenaventura* v. *Collector of Internal Revenue,* 50 *Phil.* 875); and the sales of flour to bakeries by an importer were likewise held as sales at retail (*Sy Kieng* v. *Sarmiento, G.R. No. L-2934, November* 29, 1954).

In the final analysis, "it is the character of the purchaser and not the quantity of the commodity sold that determines if the sale is wholesale or retail. If the purchaser buys the commodity for his own consumption, the sale is considered retail, irrespective of the quantity of the commodity sold. If the purchaser buys the commodity for sale, the sale is deemed wholesale regardless of the quantity of the transaction." (*Sy Kieng* v. *Sarmiento, supra*).

It may be true, as the Shell Company contends, that those responsible for the passage of Republic Act No. 1180 were primarily concerned with the alien retailer who runs a shop, *tienda*, or *sari-sari* store. But neither can it be said that Congress was unconcerned over the alien businessman who makes large sales of merchandise, commodities or goods, such as, for example, the owner of a department store or supermarket, who is obviously a retailer within the purview of the Act. Moreover, the Act itself makes no distinction between large and small sales.

Lastly, it has been said that the opposite of "retail" is "wholesale" (*Kentucky Consumer's Oil Co.* v. *Commonwealth,* 233 *S.W.* 892); and a wholesale is one made to a retailer who resells to consumers; a wholesale is never made to the ultimate consumer. (68 *C.J.* 260-261; *Sy Kieng* v. *Sarmiento, supra*). Considering that the large buyers of the Shell Company's products are not retailers but ultimate consumers, its sales to them cannot be regarded as wholesale, but retail. And the ultimate proof

that the Shell Company is a retailer consists in the fact that it sells fuel oil to fishing vessels in practically the same manner that retail service stations sell gasoline and lubricants to land vehicles.

Premises considered, the undersigned is of the opinion that the query should be answered in the affirmative.

OPINION No. 254 *

Opinion is requested on whether certain aliens who had obtained licenses to engage in the retail business after May 15, 1954, but before Republic Act No. 1180 was approved by the President of the Philippines, may be granted renewal of their licenses in order that they may continue to engage in said business.

Republic Act No. 1180, entitled, "AN ACT TO REGULATE THE RETAIL BUSINESS," was approved on June 19, 1954, and Section 1 thereof stipulates:

> "No person who is not a citizen of the Philippines, and no association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business: *Provided,* That a person who is not a citizen of the Philippines, or an association, partnership, or corporation not wholly owned by citizens of the Philippines, which is actually engaged in the said business on May 15, 1954, shall be entitled to continue to engage therein. x x x."

By express terms of this Act no alien can engage in the retail business who was not so engaged on May 15, 1954. Since the aliens referred to in the query commenced business after the prescribed date, they are included in the prohibition.

* This was rendered on September 28, 1954 upon request of the City Mayor of Quezon City, through the City Attorney.

The objection that to apply the provisions of the Act in question to aliens who opened business after May 15 but before June 19 impairs vested rights, raises a constitutional question which is for the courts alone to decide. Ours is to enforce and execute the law, not to question its validity.

For the same reason, the City Treasurer has no authority or discretion to issue temporary licenses to the applicants.

EXPLANATORY NOTE

Before the Supreme Court is pending at present an action to test the constitutional validity of Republic Act No. 1180.

Because the issues raised by the pleadings filed with the Court are the object of keen legal interest, and because the final resolution of these issues by the Court will be of paramount importance to the whole country, the constitutional arguments advanced by both the *Petition* and the *Answer* thereto, are hereinbelow reproduced.

PETITION FOR INJUNCTION AND *MANDAMUS* *

ARGUMENT

* * *

VII

Republic Act No. 1180 is null and void because it is repugnant to the Constitution and violates international and treaty obligations of the Philippines, as hereinbelow briefly indicated and as hereafter will be more fully discussed:

x x x

2. Such an Act clearly violates Section 1 of Article III of the Constitution, which reads as follows:

"No person shall be deprived of life, liberty, or property

* Lao H. Ichong et al., Petitioners, v. Jaime Hernandez et al., Respondents, G. R. No. L-7995. Prepared by former Mr. Justice Roman Ozaeta.

without due process of law, nor shall any person be denied the equal protection of the laws."

To show *prima facie* the repugnancy of the Act to this constitutional provision, and reserving the presentation of exhaustive authorities and arguments during the hearing, we give hereunder a synopsis of the adjudicated analogous cases interpreting and applying the said constitutional provision:—

(a) The liberty guaranteed by the Constitution includes the right to engage in any of the common occupations of life. In the case of *Meyer v. Nebraska*, 67 *L. Ed.* 1042, 1045, the Supreme Court of the United States, interpreting and applying the Fourteenth Amendment, from which the provision of our Constitution under consideration was derived, said:

> While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. (*Slaughter-House Cases, 16 Wall. 36; Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. & S. H. Co.*, 111 *U. S.* 746.)

(b) In a Philippine case involving deprivation of liberty and denial of equal protection of laws—*Yu Cong Eng v. Trinidad* (70 L. Ed. 1059, 1060),—the Supreme Court of the United States, speaking thru Chief Justice Taft, said:

> 10. A statute requiring Chinese merchants doing business in the Philippine Islands to keep their account books in the English or Spanish language, or local dialects, deprives them of their liberty and property without due process of law, in violation of the Philippine Bill of Rights as enacted by Congress. (*Syllabus*)
>
> 12. Chinese merchants in the Philippine Islands

> try where freedom prevails as being the essence of slavery itself.

(d) The Act in question prohibits and makes it a crime for aliens to engage in the retail business which is a gainful and honest occupation anywhere in the world and is beyond the power of the legislature to prohibit and penalize. It has no parallel to the regulation or the distribution of the public domain, or of the common property or resources of the people of the country, the enjoyment of which may be limited to its citizens as against aliens. The case of *Truax v. Raich*, 60 *L. Ed.* 131, is another analogous case to the present. That case involved the constitutionality of a statute of Arizona which required any company or individual who employed more than five workers at any one time to employ not less than 80% qualified electors or native-born citizens of the United States, and penalized the violation thereof with a fine of not less than $100.00 and imprisonment of not less than thirty (30) days. Mike Raich, a native of Austria and an inhabitant of the State of Arizona, but not a qualified elector, was employed as a cook by William Truax in his restuarant where he had nine employees, of whom seven were neither native-born citizens of the United States nor qualified electors. Raich brought an action against his employer Traux and the Attorney General of the State of Arizona to restrain the enforcement of said statute on the ground that it was unconstitutional. In affirming the decision of the district court granting the injunction, the Supreme Court of the United States, speaking thru Mr. Justice Hughes, said:

> The question, then, is whether the Act assailed is repugnant to the 14th Amendment. Upon the allegations of the bill, it must be assumed that the complainant, a native of Austria, has been admitted to the United States under the Federal Law. He was thus admitted with the privilege of entering and abiding in any state in the Union. Being lawfully an inhabitant of Arizona, the complainant is entitled under the 14th Amendment to the equal protection of its laws. The description, 'any person within its jurisdiction' as it has been frequently held, includes aliens. The discrimination defined by the Act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the state, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other states.
>
> It is sought to justify this Act as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. If this could be refused solely upon the ground of the race and nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words.

3. Republic Act No. 1180 also affends against section 21 of Article VI of the Constitution, which reads as follows:

> "No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill."

The title of the Act simply reads: "An Act to Regulate the Retail Business." It seemed designed to conceal the true purpose of the bill, namely, to nationalize the retail business of the country; to prohibit aliens and associations or corporations the capital of which is not wholly owned by citizens of the Philippines from engaging in the retail trade on pain of imprisonment and fine. "To regulate does not mean and is not synonymous with 'to prohibit'." (*Kwong Hing v. City of Manila*, 41 *Phil.* 103.)

v. City of Manila, 41 *Phil.* 103.)

4. The Philippines is a member of the United Nations and is a signatory to its Charter. The Act in question infringes various provisions of the Charter of the United Nations, among which are the following:

Art. 1, par. 3, which provides as one of the

purposes of the United Nations, "to achieve international cooperation...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race sex, language, or religion."

Art. 13, par. 1, sub-paragraph (b), which provides that the General Assembly shall initiate studies and make recomendations for the purpose of "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Art. 55, sub-paragraph (c) which provides that the United Nations shall promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

In the case of *Oyama v. California*, 332 *U. S.* 632, 92 *L. Ed.* 249, the Supreme Court of the United States upheld the right of a Japanese subject to own land in California in an escheat proceeding under the California Alien Land Law forbidding ownership of agricultural lands by aliens ineligible for citizenship under penalty of escheat. Black and Douglas, JJ., in their conccurring opinion took cognizance of the United Nations Charter provisions in question, saying:

> ...There are additional reasons now why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is that we have recently pledged ourselves to cooperate with the United Nations to 'promote ... universal respect for all without distinction as to race, sex, language or religion.' How can this nation be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced (*page* 261).

The Act in question also infringes on the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948, which among other things proclaimed:

> Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. (*Art.* 2).
>
> All are equal before the law and are entitled without any discrimination to the equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination. (*Art. 7*).
>
> Everyone has the right to work, to free choice of employment . . . (*Art. 23*).

By Section 3, Art. II of our Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the nation.

This Honorable Court has recognized and applied the above-quoted portions of the Universal Declaration of Human Rights in the following cases: *Mejoff v. Director of Prisons, G. R. No. L-4254, Sept. 26, 1951; Borovsky v. Commissioner of Immigration, G. R. No. L-4352, Oct. 26, 1951.*

The Act in question cannot be justified or sustained under the police power of the State.

"Police power is the exercise of the sovereign right of government to promote order, safety, health, morals, and the general welfare of society within constitutional limits." (C.J.S. 537.)

The "general welfare of society" means not the welfare alone of a particular group or class, but the welfare of the country as a whole.

Far from promoting the order, health, safety, morals and the general welfare of society, the Act in question, if upheld and enforced, will throw thousands of Chinese and other aliens out of employment and deprive them and their families of their means of livelihood, convert them from self-supporting, self-respecting and tax-paying members of society into public burdens, make them prey to the blandishments of the Communists, and maybe force some of them to join the lawless elements.

x x x

6. The Republic through its authorized officers and leaders, particularly the President, has publicly and repeatedly avowed the policy of maintaining friendly, cordial, and mutual-

ly helpful relations with other nations, specially its neighbors, and of attracting foreign capital into this country. If not annuled, the Act in question would serve as a cynical implementation of the laudable policy. We dare say it would also be an affront to the inherent goodness and hospitality of the Filipino people.

ANSWER*

ARGUMENT

* * *

3. REPUBLIC ACT NO. 1180 WAS PASSED IN THE VALID EXERCISE OF THE POLICE POWER OF THE STATE.

The law is assailed on constitutional grounds which may be reduced to the ultimate question of whether the government has exceeded its powers in dealing with the property, and controlling the actions of, individuals. This being the case, it becomes necessary to consider the extent and pass upon the proper bounds of state power which pervades every department of business and reaches into every interest and every subject of profit or enjoyment (*State v. Kofines* 80 *Atl.* 432, 436). This power is known as the *police power* which, in the words of Chief Justice Shaw, is

> x x x the power vested in the Legislature by the Constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same. (*Quoted in State v. Kofines, supra, citing Cooley, Constitution, 7th Ed. p.* 829.)

(a) *Economic policies of the Constitution justify excercise of police power for national economic survival.*

* By the Solicitor General, Mr. Ambrosio Padilla.

The preamble of the Philippine Constitution stresses the conservation and development of the patrimony of the nation.

> The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, x x x.

Dean Sinco, commenting on the above provision of the preamble, writes:

> The framers of the Constitution were concerned with the nationalization of the land and other natural resources of the country. They considered this matter vital and indispensable to national survival itself. In this respect they merely translated the general preoccupation of most Filipinos of the dangers from alien interests that had already brought under their control the commercial and other economic activities of the country. Thus in expressing definitely this anxiety, they first used the term 'resources of the nation'. But after making some revisions, they decided to adopt the more comprehensive expression 'patrimony of the nation', in the belief that the phrase encircles a concept embracing not only the natural resources of the islands but practically everything that belongs to the Filipino people, the tangible and the material as well as the intangible and the spiritual assests and possessions. (*Sinco, Phil. Political Law, 10th ed., p.* 114.)

Article XIII regarding the conservation and utilization of natural resources, provides:

> Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, 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, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Consti-

tution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

Sec. 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations or associations qualified to acquire or hold lands of the public domain in the Philippines.

Sec. 6. The States may, in the interests of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

This Hon. Supreme Court interpreted the above quoted Section 5 as disqualifying aliens from acquiring any land or real estate in the far reaching decision of *Krivenko v. The Register of Deeds of Manila* (44 *O. G.* 471):

We are deciding the instant case under Section 5 of Article XIII of the Constitution which is more comprehensive and more absolute in the sense that it prohibits the transfer to aliens of any private agricultural land, including residential land, whatever its origin might have been.

This prohibition makes no distinction between private lands that are strictly agricultural and private lands that are residential or commercial. The prohibition embraces the sale of private lands of any kind in favor of aliens.

It is well to note at this juncture that in the present case we have no choice. We are construing the Constitution as it is and not as we may desire it to be. Perhaps the effect of our Constitution is to preclude aliens, admitted freely into the Philippines, from owning sites where they may build their homes. But if this is the solemn mandate of the Constitution, we will not attempt to compromise it even in the name of amity or equity.

For all the foregoing we hold that under the Constitution aliens may not acquire private lands, and accordingly, judgment is affirmed, without costs.

Article XIV of the Constitution provides among the general provisions, the following:

Sec. 6. The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.

In commenting on the above Section 6 of Article XIV of our Constitution, to the effect that the State shall afford protection to labor, Professors Tañada and Fernando make the pertinent observation that:

Legislative acts, therefore, in pursuance of the above constitutional mandate, in preventing aliens from working for their living are not tainted with invalidity." (*Const. of the Phil., 1952 ed., p. 193.*)

The constitution also provides:

Sec. 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires. (Art. XIII.)

In discussing the economic policies of the Constitution, Dean Sinco had occasion to warn:

But there has been a general feeling that alien dominance over the economic life of the country is not desirable and that if such a situation should remain, political independence alone is no guarantee to national stability and strength. Filipino private capital is not big enough to wrest from alien hands the control of the national economy. Moreover, it is but of recent formation and hence, largely inexperienced, timid and hesitant. Under such conditions, the government, as the instrumentality of the national will, has to step in and assume the initiative, if not the leadership, in the struggle for the economic freedom of the nation in somewhat the same way that it did in the crusade for political freedom. Thus, when the Constitution refers to the interest of national welfare and defense as the purposes for which the state may acquire or establish industries, utilities and other private enterprises, it envisages an organized movement for the protection of the nation not only against the possibilities of an armed invasion but also against its economic subjugation by alien interests in the domestic field. (*Phil. Pol. Law, Chap.* 23, 10*th ed., p.* 476.)

In the case of *Co Chiong v. Cuaderno*, 46 *O. G.* 4833, our Supreme Court held:

Even if their position could be supposed under said general guarantees, a hypothesis the validity of which we consider unnecessary to decide, *said guarantees have to give way to the specific provisions* above quoted which reserves to Filipino citizens the operation of public services or utilities.

Furthermore, the establishment, maintenance and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions such as that of occupying market stalls, is *not among the fundamental rights, or even among the general civil rights* protected by the guarantees of the Bill of Rights.

Although foreigners are entitled to all the rights and privileges of friendly guests, they cannot claim the right to enjoy privileges which by their nature belong exclusively to the hosts. (See also *Ng Ting v. Fugoso*, 45 *O. G.* (*CA*) 2545.)

In passing upon the validity of Republic Act No. 426, relative to import quota allocation of wheat flour, this Honorable Court gave express recognition to the policy of our Government to give our countrymen greater share in our local trade, business and commerce in line with the spirit of nationalism underlying our Constitution.

We are not oblivious of this policy of our Government which is indeed very plausible and should be encouraged to give a break to our countrymen so that they may have *greater share in our local trade, business and commerce in line with the spirit of nationalism underlying our Constitution;* but plausible and patriotic though it may be, such policy should, however, be adopted gradually so as not to cause injustice and discrimination to alien firms or businessmen of long standing in the Philippines and who have long been engaged in this particular trade, thereby contributing with their money and efforts to the economic development of our country. In fact, this is the policy that our Congress has set in an unmistakable manner in Republic Act No. 426. This is also in the policy that our President has expressed in the letter he sent to the PRATRA relative to the determination of import quota allocations of wheat flour. x x x (*Chinese Flour Importers Association v. Price Stabilization Board (PRISCO), G.R. No. L-4465, July* 12, 1951.)

x x x

(c) *Specific instances of similar measures have been upheld as constitutional.*

The constitutionality of the assailed statute must, therefore, be conceded as a reasonable exercise of the police power. In the case of *State ex rel. Balli v. Carrol*, 124 *N.E.* 129, 130, an ordinance prohibiting the issuance of a license for billiard, pool tables, and bowling and shooting alleys was held constitutional upon the authority of several cases, among which was singled out the case of *Commonwealth v. Hana*, 195 *Mass.* 262, 81 *N.E.* 149, 11 *L.R.A.* 799, which also involved the constitutionality of an ordinance denying the right of a license as peddlers or hawkers to *foreigners*, from which was quoted the following:

> The requirement x x x that a licence as a hawker and peddler shall be granted only to a person who is or has declared his intention to become a citizen of the United States, is *constitutional as a reasonable exercise of the police power.* (*State v. Carrol,* 124 *N.E.* 129.)

The occupation of being a peddler or hawker does not affect as much public interest nor does it involve as extensive a coverage in the economic life of the people. If engaging in the retail business, which invariably is carried on at a much bigger scale than mere peddling, is regarded by the petitioner as an "ordinary" or "common" occupation, then that of a hawker or a mere peddler is much more so. Hence, if an ordinance denying an alien the right to the issuance of a peddler's or hawker's license has been held valid and constitutional, there is more justification and reason to hold the law in question (Rep. Act No. 1180) also valid and constitutional. Verily, licensing a retail business cannot be less subject to the kind of police measure involved in the peddler's and hawker's case.

Similarly, in the case of *Ohio v. Deckebach,* 274, *U.S.* 392, the validity of an ordinance requiring the licensing of pool and billiard rooms and prohibiting the issuance of licenses to *aliens* was challenged on the ground that there was a denial of equal protection. The Federal Supreme Court held:

> The regulation or even prohibition of the business is not forbidden. The regulation presupposes that aliens in Cincinnati are not as well qualified as citizens to engage in this business. It is not necessary that the court be satisfied that the premise is well founded in experience .
>
> It is enough for present purposes that the ordinance in the light of acts admitted or generally assumed does not preclude the possibility of a rational basis for the legislative judgment and that the court has not such knowledge of local conditions as would enable it to say that the ordinance is clearly wrong. Some latitude must be allowed for the *legislative appraisement of local conditions* and for legislative choice of methods for controlling an apprehended evil.

4. REPUBLIC ACT NO. 1180 DOES NOT VIOLATE ANY SPECIFIC CONSTITUTIONAL LIMITATION.

It is contended by petitioner that Republic Act No. 1180 violates Section 1 (1) of Article III of the Constitution which reads as follows:

> No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The constitutional guarantee of the equal protection of the laws has been interpreted to mean "That no person or class of persons shall be denied the same protection of the laws, which is enjoyed by other persons or other classes in the same place and in like circumstances." (*Missouri v. Lewis,* 101 *U. S.* 2231.)

Cooley states that:

> The guarantee of 'equal protection of the laws' . . . does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that *all persons subject to such legislation shall be treated alike,* under like circumstances and conditions, both in privileges conferred and liabilities imposed. It is *not infringed by legislation which applies only to those persons falling within a specified class,* if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not. (*Constitutional Limitations, pp.* 824-825.)

Thus, in the case of *Barbier v. Connally,* 113 *U. S.* 27, 28, *L. Ed.* 923, 5 *Sup. Ct. Rep.* 259, it was held that:

> Legislation discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a *public purpose,* is limited in its application, if within the sphere of its operation it *affects alike all persons similarly situated, is not within the amendment.*

It is true that a state is required by the equal protection of laws to extend to all substantially equal treatment in all facilities or privileges, but it may choose the method by which equality is to be maintained and is not required to provide privileges for the members of both races in the same place, nor is it necessary that the privileges be identical; if they are equal, it is sufficient. Racial distinction, however, may furnish legitimate grounds for classification under some conditions of social or governmental necessities (*Porterfield v. Webb*, 231 *P.* 554, 195 *Cal.* 71).

In the case of *People v. Caynt*, 38 *O. G.* 710, this Hon. Supreme Court stated that:

> It is an established principle of constitutional law that the guarantee of equal protection of the laws is not violated by a legislation *based on reasonable classification.* And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.

The equal protection clause of the Constitution permits reasonable classification along the lines of nationality in the exercise of police power.

> Aliens are under no special constitutional protection which forbids a classification otherwise justified simply because the limitation of the class falls along the lines of nationality. That would be requiring a higher degree of protection for aliens as a class than for similar classes of American citizens. Broadly speaking, the difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of police power. (2 *Am. Jur. Sec.* 11, *pp.* 468-469.)
>
> Although the Fourteenth Amendment has been held to prohibit plainly *irrational discrimination* against aliens . . . it does not follow that alien race and allegiance may not bear in some instances such a relation to a legitimate object of legislation as to be made the basis of a permitted classification. (*Ohio ex rel. Clarke v. Deckenbach*, 274 *U. S.* 392, 71 *L. Ed.* 1145, 47 *S. Ct.* 630.)

In the case of *Laurel v. Misa*, 42 *O. G.* 2847, this Hon. Supreme Court stated that:

> It is an accepted doctrine in constitutional law that the equal protection clause does not prevent the Legislature from establishing classes of individuals or objects upon which different rules shall operate so long as the classification is not unreasonable. Instances of valid classification are numerous.
>
> (a) *Engaging in retail business is not one of the common occupations of life said to be guaranteed by the "equal protection" clause.*

The case of *Meyer v. Nebraska*, 67 *L. Ed.* 1042, is cited as authority for the proposition that the liberty guaranteed by the Constitutional provision on "equal protection of the laws" includes the right to engage in any of the common occupations of life.

An authoritative definition is yet to be found as to what is considered a common occupation. But if an attempt is to be made, a common occupation is one the carrying of which requires no other equipment or materials than the natural faculties and resources of the individual, or where such natural faculties and resources are the major items as distinguished from the mere incidental ones. Thus, to work as a tenant, farm-help, barber, or the like, one needs only his physical strength and personal labor with which to carry on his occupation. Whatever equipment may have to be used in connection therewith need not be furnished by him. In this sense, the occupation of teaching or tutoring requiring as it does as its main equipment, the necessary mental faculty cultivated by study and experience,—books, pencils and similar materials being merely incidental, may be classed as a common occupation, as seems to be the concept in the mind of the court in the *Meyer v. Nebraska* case when it adverted to the right to engage in a common occupation.

But in engaging in the retail business, one has to have more than his natural faculties and ingenuity to carry on the trade. He has to have a suitable place, and above all, the goods and merchandise which he sells to the public which he himself does not produce, but are procured through some system of

purchasing and merchandising technique and dealing with other elements in the commercial world, the wholesalers, and capitalists. Then, he deals with the public at large with respect to such goods and commodities which are of a nature that they vitally affect everyday life in such a manner that a relationship with the public is created. It certainly cannot be reasonably contended that operating a public service is a common occupation.

(b) *Engaging in the retail business is not an inherent civil right nor an ordinary property right.*

The power to discriminate against aliens is sometimes made to depend upon whether what is involved is a right or a mere privilege, the power being denied in the former case, but affirmed in the latter case (*See Anno.* 39 *A. L. R., pp.* 346-347). That engaging in the retail business is a mere privilege and not a right seems to be quite evident from the fact that the occupation has always been subject to license.

> The term 'license' is not one whose meaning is involved in uncertainty or doubt. The object of a license is to confer a *right that does not exist without a license.* It is a *permission* to do something which without the license would not be allowed. This definition is in substance that given in a number of cases. *Youngblood v. Sexton,* 32 *Mich.* 406, 20 *Am. Rep.* 654, *Cooley J.; Home Ins. Co. v. Augusta,* 50 *Ga.* 530; *State v. Hipp,* 38 *Ohio St.* 206; 5 *Words and Phrases,* 4133. (*Bloomfield v. State,* 99 *N. E.* 309, 310.)

The criterion indicated above would repel the theory that engaging in the retail business is but an exercise of the right to engage in a common occupation. In the first place, it is not a common occupation as already demonstrated. In the second place, it is not an inherent civil right. Neither is it an ordinary property right. In the case of *Pedro v. Provincial Board of Rizal,* 56 *Phil.* 123, this Honorable Court held:

> That a license authorizing the operation and exploitation of a cockpit is not property of which the holder may not be deprived without due process of law, but a mere privilege which may be revoked when the public interests so require. (*p. 132.*)

In the body of the decision of the above case, we find this pertinent portion:

> The petitioner-appellant contends that, having obtained the proper permit to maintain, exploit, and operate the public cockpit in question, having paid the license fee and fulfilled all the requirements provided by Ordinance No. 35, series of 1928, he has acquired a right which cannot be taken away from him by Ordinance No. 36, series of 1928, which was subsequently approved. This court has already held that ordinances regulating the functioning of cockpits do not create irrevocable rights and may be abrogated by another ordinance. (*Vince v. Municipality of Hinigaran,* 41 *Phil.* 790; *Joaquin v. Herrera,* 37 *Phil.* 705; 12 *Corpus Juris,* 958, 37 *Corpus Juris,* 168.)

The license to engage in retail trade is a mere privilege that may constitutionally be the subject of exclusive enjoyment by the citizens, not unlike the privilege to practice law or to engage as pawnbroker (*Cf. Asakura v. Seattle, 210 Pac. 30*). In fact, under our laws, aliens suffer among others the following specific disabilities: (1) Right to acquire, exploit, utilize agricultural, timber, or mineral lands (*Art. XIII, Sec. 1, Constitution*); (2) Right to acquire private agricultural land (*Art. XIII, Sec. 5*); (3) Authorization to operate public utility (*Art. XIV, Sec. 8*); (4) Right to vote (*Art. V*) and hold public offices (*Art. XII*); (5) Right to engage in the legal (*Rule 127, Sec. 2, Rules of Court*) and medical professions (*Sec. 772, Rev. Adm. Code*); (6) To engage in coastwise shipping (*Sec. 1172, Rev. Adm. Code*).

x x x

(d) *The legislative classification adapted in Republic Act No. 1180 is not arbitrary nor without reasonable basis.*

Is there a reasonable basis for the legislative classification by which aliens are excluded from participation in the retail

business? The reasons given in the case of *Anton v. Van Winkle, supra*, for the discrimination against aliens may well be applied in the enactment of Republic Act No. 1180. The evils arising from such practices as hoarding, profiteering, and cornering of prime commodities, strike at the everyday life of the people. The retail business affords the most fertile ground where the hoarders and profiteers can ply these pernicious practices. When the people groan under the impact of such nefarious acts, the suffering populace instinctively blame aliens for their plight. Experience showed that such a reaction is not without solid basis, for it is a widespread and well-founded belief that these abuses are traceable mostly, if not solely, to alien traders.

The conduct of the retail business is thus attended by possibilities of evil and abuse which can hardly be eliminated as long as non-citizens who show indifference to civic obligations and are not urged by patriotic impulses hold sway in the field. These considerations furnish the reasonable basis for the legislative statute. And the courts should be slow in finding no warrant for such classification.

> The question therefore narrows itself to whether this court can say that the legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized *aliens were the peculiar source of the evil that it desired to prevent*. . . . Obviously the question as stated is one of local experience in which this court ought to be very slow to declare that the state legislature was wrong in its facts. . . . If we might trust popular speech in some states it was right; but it is enough that this court has no such knowledge of local conditions as to be able to say that it was manifestly wrong. (*Wright v. May, L. R. A.* [1915B] 153.)

In the case of *Crane v. New York, 239 U. S. 195*, the Federal Supreme Court restated the rule as follows:

> The Courts must assume that the legislature acts according to its judgment for the best interests of the state. A wrong intent cannot be imputed to it . . . They are not at liberty to inquire into the motives of the legislature, they can only examine into its power under the Constitution. They have nothing to do with the policy, wisdom, justice, or fairness of the act.

x x x

6. Republic Act No. 1180 Does Not Infringe Any Treaty or International Obligation.

It is claimed that the Act in question infringes various provisions of the Charter of the United Nations. The provisions referred to, however, are upon examination found to be no more than a mere reaffirmation of age-old concepts of human rights and fundamental freedom, to which we had already adhered long before the United Nations Charter was written. They are not new tenets serving as basis of international relations, and their subordinate position with reference to equally time-honored principles of internal government or domestic regulation, such as that of the police power, have long been stabilized. They may serve as a reminder against arbitrary acts of discrimination directed against nationals of foreign countries such as those motivated by racial prejudice or hostility (*Oyama v. California*, 332 *U. S.* 633, 92 *L. Ed.* 249). But they cannot stop a reasonable exercise of police power impelled by powerful justification, as is the case with the enactment of the law in question, for the State cannot contract away by treaty the reserved police poyer. (*Patsone v. Pennsylvania*, 58 *L. Ed.* 539).

Kelsen, in analyzing the provisions of the Charter of the United Nations quoted by counsel for petitioner, states:

> The Charter *does not impose upon the Members a strict obligation to grant to their subjects the rights and freedoms mentioned in the Preamble or in the text of the Charter.* The language used by the Charter in this respect does not allow the interpretation that the Members are under *legal* obligations regarding the rights and freedoms of their subjects. All the formulas concerned establish *purposes* or *functions* of the Organization, not *obligations* of the Members, and the Organization is *not empowered* by the Charter to impose upon the governments of the Member states the obligation

> to guarantee to their subjects the rights referred to in the Charter. The fact that the Charter, as a treaty, refers to a matter is in itself not a sufficient reason for the assumption that the Charter imposes obligations with respect to this matter upon the contracting parties. Besides, the Charter does in no way specify the rights and freedoms to which it refers. Legal obligations of the Members in this respect can be established only by an amendment to the Charter or by a convention negotiated under the auspices of the United Nations and ratified by the Members. (*Hans Kelsen, The Law of the United Nations, 1951 ed., pp. 29-32.*) (*Underscoring ours.*)

With respect to Articles 2, 7 and 23 of the Universal Declaration of Human Rights, cited by counsel for petitioners, Kelsen likewise noted:

> This resolution has probably the *character of a recommendation*, although it does not present itself expressly as such. The General Assembly *only proclaims this Declaration 'as a common standard of achievement for all peoples and all nations.'* If this proclamation is to be interpreted as a recommendation, the question arises to whom this recommendation is made. It is significant that it is not addressed to the 'Members', or to the 'States', or to the 'Governments'. The Declaration *is intended to be a common standard of achievement for 'all peoples and all nations'*; and the proclamation is made 'to the end that every individual and every organ of society . . . shall strive to . . .' (*The Law of the United Nations, 1951 ed., p. 39.*) (*Underscoring supplied.*)

It is therefore clear that there could have been no violation of provisions of a treaty under which the Members thereof do not have any *specific* legal obligation whatever.

Assuming that the Philippines is *legally* bound to observe the Charter of the United Nations and the Declaration of Human Rights adopted by the General Assembly of the United Nations, is Rep. Act No. 1180 null and void as being contrary to it?

There is no principle of law more firmly established by the highest court of the land than that, while a treaty will supersede a prior act of Congress, *an act of Congress may supersede a prior treaty.* The latest expression controls, whether it be a treaty or an act of Congress. (*U. S. v. Thompson*, 258 *Fed.* 257, 268.) (*Underscoring supplied.*)

The American Supreme Court in construing the Constitution of the United Sates which provides that, in addition to the Constitution and laws in accord therewith, "all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land," (*Art. 6, clause* 2) has said "that a treaty may supersede a prior act of Congress, and an Act of Congress supersede a prior treaty is elementary." (*Ward v. Race Horse*, 163 *U.S.* 504, 16 *S. Ct.* 1076, 41 *L. Ed.* 244).

And in *Taylor v. Morton* (*Fed. Case No.* 13799, 2 *Curt.* 454), it was held:

> There is nothing in the language of this clause which enable us to say that the treaty, and *not the act of Congress*, is to afford the rule. Ordinarily treaties are not rules prescribed by sovereigns for the conduct of their subjects, but contracts by which they agree to regulate their own conduct. This provision of our Constitution has made treaties part of our municipal law; but it has not assigned to them any particular degree of authority in our municipal law, nor declared whether laws so enacted shall or shall not be paramount to laws otherwise enacted. No such declaration is made, even in respect to the Constitution itself. It is named in conjunction with treaties and acts of Congress as one of the supreme laws, but no supremacy is in terms assigned to one over the other; and when it became necessary to determine whether an Act of Congress repugnant to the Constitution could be deemed by the judicial power an operative law, the solution of the question was found by considering the nature and objects of each species of law, the authority from which it emanated, and the consequences of allowing or denying the paramount effect of the Constitution. It is only by a similar course of inquiry that we can determine the question now under consideration.

Article VIII, Sec. 10 of our own Constitution places the interpretation of treaties as municipal laws within the jurisdiction of the courts:

> All cases involving the constitutionality of a *treaty* or *law* shall be heard and decided by the Supreme Court *in banc*, and no *treaty* or *law* may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court.

Thus a treaty is by the fundamental law rendered operative to the same extent as an act of Congress, and in case of conflict for domestic purposes would be interpreted in accord with the same principles as apply in cases of conflict in acts of Congress. (*Wilson on International Law, 3rd ed., Sec. 83, pp. 218-219*).

Republic Act No. 1180 is later in point of time. Moreover, a treaty must be consistent with the Constitution. A treaty may not be given effect when its terms are inconsistent with the provisions of a statute enacted by the legislative authority subsequent to the treaty. International usages or the customs of civilized nations are given effect by the courts in the *absence* of any treaty, executive order, legislative act, or judicial decision. (*Sinco, Philippine Political Law, 10th ed., pp. 123-124*).

In common law countries, it is generally assumed that the rules of international law are part of the law of the land and consequently are enforced by the courts in the decision of cases before them involving the same. At least this is *the case where there is no statute or provisions of treaty to the contrary. For where there are such, said rules must yield to the said provisions.* (*Aruego, Know Your Constitution, 1950 ed., p. 261.*)

In the case of *Geizzarelli v. Presbrey*, 117 *Atl.* 369, an ordinance prohibiting the operation of a motor bus within the city without a license to a person not a citizen of the United States was held not violative of the treaty between the United States and Italy, entitling the citizens of each of the parties to the "same rights and privileges" while within the other country, there being a basis for the discrimination made between citizens and aliens with reference to the issuance of such licenses.

We have not been cited to any treaty with China (the petitioner is a Chinese), much less one with provisions similar to the treaty involved in the *Geizzarelli* case. The only provisions to which attention has been drawn are those appearing in the United Nations Charter which, being mere general declarations, could not be more binding or compelling in their mandate of insuring equality between citizens and aliens than formal treaty provisions of a character as that of the American-Italian treaty referred to above. If such treaty covenants could not even prevent a lawful exercise of the police power of the state as tested by the existence of a proper basis for the discrimination, the United Nations Charter declarations could not be more potent. Obedience to and fulfillment of the ideals embodied in the declarations may be ends devoutly to be desired but not at the expense of national survival itself.