Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-7995 May 31, 1957

LAO H. ICHONG, in his own behalf and in behalf of other alien residents, corporations and partnerships adversely affected. by Republic Act No. 1180, petitioner,
vs.
JAIME HERNANDEZ, Secretary of Finance, and MARCELINO SARMIENTO, City Treasurer of Manila, respondents.

Ozaeta, Lichauco and Picazo and Sycip, Quisumbing, Salazar and Associates for petitioner.
Office of the Solicitor General Ambrosio Padilla and Solicitor Pacifico P. de Castro for respondent Secretary of Finance.
City Fiscal Eugenio Angeles and Assistant City Fiscal Eulogio S. Serrano for respondent City Treasurer.
Dionisio Reyes as Amicus Curiae.
Marcial G. Mendiola as Amicus Curiae.
Emiliano R. Navarro as Amicus Curiae.

LABRADOR, *J.*:

I. *The case and issue, in general*

This Court has before it the delicate task of passing upon the validity and constitutionality of a legislative enactment, fundamental and far-reaching in significance. The enactment poses questions of due process, police power and equal protection of the laws. It also poses an important issue of fact, that is whether the conditions which the disputed law purports to remedy really or actually exist. Admittedly springing from a deep, militant, and positive nationalistic impulse, the law purports to protect citizen and country from the alien retailer. Through it, and within the field of economy it regulates, Congress attempts to translate national aspirations for economic independence and national security, rooted in the drive and urge for national survival and welfare, into a concrete and tangible measures designed to free the national retailer from the competing dominance of the alien, so that the country and the nation may be free from a supposed economic dependence and bondage. Do the facts and circumstances justify the enactment?

II. *Pertinent provisions of Republic Act No. 1180*

Republic Act No. 1180 is entitled "An Act to Regulate the Retail Business." In effect it nationalizes the retail trade business. The main provisions of the Act are: (1) a

prohibition against persons, not citizens of the Philippines, and against associations, partnerships, or corporations the capital of which are not wholly owned by citizens of the Philippines, from engaging directly or indirectly in the retail trade; (2) an exception from the above prohibition in favor of aliens actually engaged in said business on May 15, 1954, who are allowed to continue to engaged therein, unless their licenses are forfeited in accordance with the law, until their death or voluntary retirement in case of natural persons, and for ten years after the approval of the Act or until the expiration of term in case of juridical persons; (3) an exception therefrom in favor of citizens and juridical entities of the United States; (4) a provision for the forfeiture of licenses (to engage in the retail business) for violation of the laws on nationalization, control weights and measures and labor and other laws relating to trade, commerce and industry; (5) a prohibition against the establishment or opening by aliens actually engaged in the retail business of additional stores or branches of retail business, (6) a provision requiring aliens actually engaged in the retail business to present for registration with the proper authorities a verified statement concerning their businesses, giving, among other matters, the nature of the business, their assets and liabilities and their offices and principal offices of judicial entities; and (7) a provision allowing the heirs of aliens now engaged in the retail business who die, to continue such business for a period of six months for purposes of liquidation.

III. *Grounds upon which petition is based-Answer thereto*

Petitioner, for and in his own behalf and on behalf of other alien residents corporations and partnerships adversely affected by the provisions of Republic Act. No. 1180, brought this action to obtain a judicial declaration that said Act is unconstitutional, and to enjoin the Secretary of Finance and all other persons acting under him, particularly city and municipal treasurers, from enforcing its provisions. Petitioner attacks the constitutionality of the Act, contending that: (1) it denies to alien residents the equal protection of the laws and deprives of their liberty and property without due process of law ; (2) the subject of the Act is not expressed or comprehended in the title thereof; (3) the Act violates international and treaty obligations of the Republic of the Philippines; (4) the provisions of the Act against the transmission by aliens of their retail business thru hereditary succession, and those requiring 100% Filipino capitalization for a corporation or entity to entitle it to engage in the retail business, violate the spirit of Sections 1 and 5, Article XIII and Section 8 of Article XIV of the Constitution.

In answer, the Solicitor-General and the Fiscal of the City of Manila contend that: (1) the Act was passed in the valid exercise of the police power of the State, which exercise is authorized in the Constitution in the interest of national economic survival; (2) the Act has only one subject embraced in the title; (3) no treaty or international obligations are infringed; (4) as regards hereditary succession, only the form is affected but the value of the property is not impaired, and the institution of inheritance is only of statutory origin.

IV. *Preliminary consideration of legal principles involved*

a. The police power. —

There is no question that the Act was approved in the exercise of the police power, but petitioner claims that its exercise in this instance is attended by a violation of the constitutional requirements of due process and equal protection of the laws. But before proceeding to the consideration and resolution of the ultimate issue involved, it would be well to bear in mind certain basic and fundamental, albeit preliminary, considerations in the determination of the ever recurrent conflict between police power and the guarantees of due process and equal protection of the laws. What is the scope of police power, and how are the due process and equal protection clauses related to it? What is the province and power of the legislature, and what is the function and duty of the courts? These consideration must be clearly and correctly understood that their application to the facts of the case may be brought forth with clarity and the issue accordingly resolved.

It has been said the police power is so far - reaching in scope, that it has become almost impossible to limit its sweep. As it derives its existence from the very existence of the State itself, it does not need to be expressed or defined in its scope; it is said to be co-extensive with self-protection and survival, and as such it is the most positive and active of all governmental processes, the most essential, insistent and illimitable. Especially is it so under a modern democratic framework where the demands of society and of nations have multiplied to almost unimaginable proportions; the field and scope of police power has become almost boundless, just as the fields of public interest and public welfare have become almost all-embracing and have transcended human foresight. Otherwise stated, as we cannot foresee the needs and demands of public interest and welfare in this constantly changing and progressive world, so we cannot delimit beforehand the extent or scope of police power by which and through which the State seeks to attain or achieve interest or welfare. So it is that Constitutions do not define the scope or extent of the police power of the State; what they do is to set forth the limitations thereof. The most important of these are the due process clause and the equal protection clause.

b. Limitations on police power. —

The basic limitations of due process and equal protection are found in the following provisions of our Constitution:

> SECTION 1.(1) No person shall be deprived of life, liberty or property without due process of law, nor any person be denied the equal protection of the laws. (Article III, Phil. Constitution)

These constitutional guarantees which embody the essence of individual liberty and freedom in democracies, are not limited to citizens alone but are admittedly universal in their application, without regard to any differences of race, of color, or of nationality. (Yick Wo vs. Hopkins, 30, L. ed. 220, 226.)

c. The, equal protection clause. —

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause 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 exists for making a distinction between those who fall within such class and those who do not. (2 Cooley, Constitutional Limitations, 824-825.)

d. The due process clause. —

The due process clause has to do with the reasonableness of legislation enacted in pursuance of the police power. Is there public interest, a public purpose; is public welfare involved? Is the Act reasonably necessary for the accomplishment of the legislature's purpose; is it not unreasonable, arbitrary or oppressive? Is there sufficient foundation or reason in connection with the matter involved; or has there not been a capricious use of the legislative power? Can the aims conceived be achieved by the means used, or is it not merely an unjustified interference with private interest? These are the questions that we ask when the due process test is applied.

The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due process of law; and persons may be classified into classes and groups, provided everyone is given the equal protection of the law. The test or standard, as always, is reason. The police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means. And if distinction and classification has been made, there must be a reasonable basis for said distinction.

e. *Legislative discretion not subject to judicial review.* —

Now, in this matter of equitable balancing, what is the proper place and role of the courts? It must not be overlooked, in the first place, that the legislature, which is the constitutional repository of police power and exercises the prerogative of determining the policy of the State, is by force of circumstances primarily the judge of necessity, adequacy or reasonableness and wisdom, of any law promulgated in the exercise of the police power, or of the measures adopted to implement the public policy or to achieve public interest. On the other hand, courts, although zealous guardians of individual liberty and right, have nevertheless evinced a reluctance to interfere with the exercise of the legislative prerogative. They have done so early where there has been a clear, patent or palpable arbitrary and unreasonable abuse of the legislative prerogative. Moreover,

courts are not supposed to override legitimate policy, and courts never inquire into the wisdom of the law.

V. *Economic problems sought to be remedied*

With the above considerations in mind, we will now proceed to delve directly into the issue involved. If the disputed legislation were merely a regulation, as its title indicates, there would be no question that it falls within the legitimate scope of legislative power. But it goes further and prohibits a group of residents, the aliens, from engaging therein. The problem becomes more complex because its subject is a common, trade or occupation, as old as society itself, which from the immemorial has always been open to residents, irrespective of race, color or citizenship.

a. Importance of retail trade in the economy of the nation. —

In a primitive economy where families produce all that they consume and consume all that they produce, the dealer, of course, is unknown. But as group life develops and families begin to live in communities producing more than what they consume and needing an infinite number of things they do not produce, the dealer comes into existence. As villages develop into big communities and specialization in production begins, the dealer's importance is enhanced. Under modern conditions and standards of living, in which man's needs have multiplied and diversified to unlimited extents and proportions, the retailer comes as essential as the producer, because thru him the infinite variety of articles, goods and needed for daily life are placed within the easy reach of consumers. Retail dealers perform the functions of capillaries in the human body, thru which all the needed food and supplies are ministered to members of the communities comprising the nation.

There cannot be any question about the importance of the retailer in the life of the community. He ministers to the resident's daily needs, food in all its increasing forms, and the various little gadgets and things needed for home and daily life. He provides his customers around his store with the rice or corn, the fish, the salt, the vinegar, the spices needed for the daily cooking. He has cloths to sell, even the needle and the thread to sew them or darn the clothes that wear out. The retailer, therefore, from the lowly peddler, the owner of a small *sari-sari* store, to the operator of a department store or, a supermarket is so much a part of day-to-day existence.

b. The alien retailer's trait. —

The alien retailer must have started plying his trades in this country in the bigger centers of population (Time there was when he was unknown in provincial towns and villages). Slowly but gradually be invaded towns and villages; now he predominates in the cities and big centers of population. He even pioneers, in far away nooks where the beginnings of community life appear, ministering to the daily needs of the residents and purchasing their agricultural produce for sale in the towns. It is an undeniable fact that in many communities the alien has replaced the native retailer. He has shown in this trade, industry without limit, and the patience and forbearance of a slave.

Derogatory epithets are hurled at him, but he laughs these off without murmur; insults of ill-bred and insolent neighbors and customers are made in his face, but he heeds them not, and he forgets and forgives. The community takes note of him, as he appears to be harmless and extremely useful.

c. Alleged alien control and dominance. —

There is a general feeling on the part of the public, which appears to be true to fact, about the controlling and dominant position that the alien retailer holds in the nation's economy. Food and other essentials, clothing, almost all articles of daily life reach the residents mostly through him. In big cities and centers of population he has acquired not only predominance, but apparent control over distribution of almost all kinds of goods, such as lumber, hardware, textiles, groceries, drugs, sugar, flour, garlic, and scores of other goods and articles. And were it not for some national corporations like the Naric, the Namarco, the Facomas and the Acefa, his control over principal foods and products would easily become full and complete.

Petitioner denies that there is alien predominance and control in the retail trade. In one breath it is said that the fear is unfounded and the threat is imagined; in another, it is charged that the law is merely the result of radicalism and pure and unabashed nationalism. Alienage, it is said, is not an element of control; also so many unmanageable factors in the retail business make control virtually impossible. The first argument which brings up an issue of fact merits serious consideration. The others are matters of opinion within the exclusive competence of the legislature and beyond our prerogative to pass upon and decide.

The best evidence are the statistics on the retail trade, which put down the figures in black and white. Between the constitutional convention year (1935), when the fear of alien domination and control of the retail trade already filled the minds of our leaders with fears and misgivings, and the year of the enactment of the nationalization of the retail trade act (1954), official statistics unmistakably point out to the ever-increasing dominance and control by the alien of the retail trade, as witness the following tables:

		Assets		Gross Sales	
Year and Retailers Nationality	No.- Establishments	Pesos	Per cent Distribution	Pesos	Per cent Distribution
1941:					
Filipino	106,671	200,323,138	55.82	174,181,924	51.74
Chinese	15,356	118,348,692	32.98	148,813,239	44.21
Others	1,646	40,187,090	11.20	13,630,239	4.05

1947:						
	Filipino	111,107	208,658,946	65.05	279,583,333	57.03
	Chinese	13,774	106,156,218	33.56	205,701,134	41.96
	Others	354	8,761,260	.49	4,927,168	1.01
1948:	(Census)					
	Filipino	113,631	213,342,264	67.30	467,161,667	60.51
	Chinese	12,087	93,155,459	29.38	294,894,227	38.20
	Others	422	10,514,675	3.32	9,995,402	1.29
1949:						
	Filipino	113,659	213,451,602	60.89	462,532,901	53.47
	Chinese	16,248	125,223,336	35.72	392,414,875	45.36
	Others	486	12,056,365	3.39	10,078,364	1.17
1951:						
	Filipino	119,352	224,053,620	61.09	466,058,052	53.07
	Chinese	17,429	134,325,303	36.60	404,481,384	46.06
	Others	347	8,614,025	2.31	7,645,327	87

AVERAGE
ASSETS AND GROSS SALES PER ESTABLISHMENT

Year and Retailer's Nationality	Item Assets (Pesos)	Gross Sales (Pesos)
1941:		

	Filipino	1,878	1,633
	Chinese	7,707	9,691
	Others	24,415	8,281
1947:			
	Filipino	1,878	2,516
	Chinese	7,707	14,934
	Others	24,749	13,919
1948:	(Census)		
	Filipino	1,878	4,111
	Chinese	7,707	24,398
	Others	24,916	23,686
1949:			
	Filipino	1,878	4,069
	Chinese	7,707	24,152
	Others	24,807	20,737
1951:			
	Filipino	1,877	3,905
	Chinese	7,707	33,207

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Others	24,824	22,033

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(Estimated Assets and Gross Sales of Retail Establishments, By Year and Nationality of Owners, Benchmark: 1948 Census, issued by the Bureau of Census and Statistics, Department of Commerce and Industry; pp. 18-19 of Answer.)

The above statistics do not include corporations and partnerships, while the figures on Filipino establishments already include mere market vendors, whose capital is necessarily small..

The above figures reveal that in percentage distribution of assests and gross sales, alien participation has steadily increased during the years. It is true, of course, that Filipinos have the edge in the number of retailers, but aliens more than make up for the numerical gap through their assests and gross sales which average between six and seven times those of the very many Filipino retailers. Numbers in retailers, here, do not imply superiority; the alien invests more capital, buys and sells six to seven times more, and gains much more. The same official report, pointing out to the known predominance of foreign elements in the retail trade, remarks that the Filipino retailers were largely engaged in minor retailer enterprises. As observed by respondents, the native investment is thinly spread, and the Filipino retailer is practically helpless in matters of capital, credit, price and supply.

d. *Alien control and threat, subject of apprehension in Constitutional convention. —*

It is this domination and control, which we believe has been sufficiently shown to exist, that is the legislature's target in the enactment of the disputed nationalization would never have been adopted. The framers of our Constitution also believed in the existence of this alien dominance and control when they approved a resolution categorically declaring among other things, that "it is the sense of the Convention that the public interest requires the nationalization of the retail trade; . . . ." (II Aruego, The Framing of the Philippine Constitution, 662-663, quoted on page 67 of Petitioner.) That was twenty-two years ago; and the events since then have not been either pleasant or comforting. Dean Sinco of the University of the Philippines College of Law, commenting on the patrimony clause of the Preamble opines that the fathers of our Constitution were merely translating the general preoccupation of Filipinos "of the dangers from alien interests that had already brought under their control the commercial and other economic activities of the country" (Sinco, Phil. Political Law, 10th ed., p. 114); and analyzing the concern of the members of the constitutional convention for the economic life of the citizens, in connection with the nationalistic provisions of the Constitution, he says:

> 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 . . . it (the Constitution) envisages an organized movement for the protection of the nation not only against the possibilities of armed invasion but also against its economic subjugation by alien interests in the economic field. (Phil. Political Law by Sinco, 10th ed., p. 476.)

Belief in the existence of alien control and predominance is felt in other quarters. Filipino businessmen, manufacturers and producers believe so; they fear the dangers coming from alien control, and they express sentiments of economic independence. Witness thereto is Resolution No. 1, approved on July 18, 1953, of the Fifth National convention of Filipino Businessmen, and a similar resolution, approved on March 20, 1954, of the Second National Convention of Manufacturers and Producers. The man in the street also believes, and fears, alien predominance and control; so our newspapers, which have editorially pointed out not only to control but to alien stranglehold. We, therefore, find alien domination and control to be a fact, a reality proved by official statistics, and felt by all the sections and groups that compose the Filipino community.

e. *Dangers of alien control and dominance in retail. —*

But the dangers arising from alien participation in the retail trade does not seem to lie in the predominance alone; there is a prevailing feeling that such predominance may truly endanger the national interest. With ample capital, unity of purpose and action and thorough organization, alien retailers and merchants can act in such complete unison and concert on such vital matters as the fixing of prices, the determination of the amount of goods or articles to be made available in the market, and even the choice of the goods or articles they would or would not patronize or distribute, that fears of dislocation of the national economy and of the complete subservience of national economy and of the consuming public are not entirely unfounded. Nationals, producers and consumers alike can be placed completely at their mercy. This is easily illustrated. Suppose an article of daily use is desired to be prescribed by the aliens, because the producer or importer does not offer them sufficient profits, or because a new competing article offers bigger profits for its introduction. All that aliens would do is to agree to refuse to sell the first article, eliminating it from their stocks, offering the new one as a substitute. Hence, the producers or importers of the prescribed article, or its consumers, find the article suddenly out of the prescribed article, or its consumers, find the article suddenly out of circulation. Freedom of trade is thus curtailed and free enterprise correspondingly suppressed.

We can even go farther than theoretical illustrations to show the pernicious influences of alien domination. Grave abuses have characterized the exercise of the retail trade by aliens. It is a fact within judicial notice, which courts of justice may not properly overlook or ignore in the interests of truth and justice, that there exists a general feeling on the part of the public that alien participation in the retail trade has been attended by a pernicious and intolerable practices, the mention of a few of which would suffice for our purposes; that at some time or other they have cornered the market of essential commodities, like corn and rice, creating artificial scarcities to justify and enhance profits to unreasonable proportions; that they have hoarded essential foods to the inconvenience and prejudice of the consuming public, so much so that the Government has had to establish the National Rice and Corn Corporation to save the public from their continuous hoarding practices and tendencies; that they have violated price control laws, especially on foods and essential commodities, such that the legislature had to enact a law (Sec. 9, Republic Act No. 1168), authorizing their immediate and automatic deportation for price control convictions; that they have secret combinations among themselves to control prices, cheating the operation of the law of supply and demand; that they have connived to boycott honest merchants and traders who would not cater or yield to their demands, in unlawful restraint of freedom of trade and enterprise. They are believed by the public to have evaded tax laws, smuggled goods and money into and out of the land, violated import and export prohibitions, control laws and the like, in derision and contempt of lawful authority. It is also believed that they have engaged in corrupting public officials with fabulous bribes, indirectly causing the prevalence of graft and corruption in the Government. As a matter of fact appeals to unscrupulous aliens have been made both by the Government and by their own lawful diplomatic representatives, action which impliedly admits a prevailing feeling about the existence of many of the above practices.

The circumstances above set forth create well founded fears that worse things may come in the future. The present dominance of the alien retailer, especially in the big centers of population, therefore, becomes a potential source of danger on occasions of war or other calamity. We do not have here in this country isolated groups of harmless aliens retailing goods among nationals; what we have are well organized and powerful groups that dominate the distribution of goods and commodities in the communities and big centers of population. They owe no allegiance or loyalty to the State, and the State cannot rely upon them in times of crisis or emergency. While the national holds his life, his person and his property subject to the needs of his country, the alien may even become the potential enemy of the State.

f. *Law enacted in interest of national economic survival and security. —*

We are fully satisfied upon a consideration of all the facts and circumstances that the disputed law is not the product of racial hostility, prejudice or discrimination, but the expression of the legitimate desire and determination of the people, thru their authorized representatives, to free the nation from the economic situation that has unfortunately been saddled upon it rightly or wrongly, to its disadvantage. The law is clearly in the interest of the public, nay of the national security itself, and indisputably

falls within the scope of police power, thru which and by which the State insures its existence and security and the supreme welfare of its citizens.

VI. *The Equal Protection Limitation*

a. Objections to alien participation in retail trade. — The next question that now poses solution is, Does the law deny the equal protection of the laws? As pointed out above, the mere fact of alienage is the root and cause of the distinction between the alien and the national as a trader. The alien resident owes allegiance to the country of his birth or his adopted country; his stay here is for personal convenience; he is attracted by the lure of gain and profit. His aim or purpose of stay, we admit, is neither illegitimate nor immoral, but he is naturally lacking in that spirit of loyalty and enthusiasm for this country where he temporarily stays and makes his living, or of that spirit of regard, sympathy and consideration for his Filipino customers as would prevent him from taking advantage of their weakness and exploiting them. The faster he makes his pile, the earlier can the alien go back to his beloved country and his beloved kin and countrymen. The experience of the country is that the alien retailer has shown such utter disregard for his customers and the people on whom he makes his profit, that it has been found necessary to adopt the legislation, radical as it may seem.

Another objection to the alien retailer in this country is that he never really makes a genuine contribution to national income and wealth. He undoubtedly contributes to general distribution, but the gains and profits he makes are not invested in industries that would help the country's economy and increase national wealth. The alien's interest in this country being merely transient and temporary, it would indeed be ill-advised to continue entrusting the very important function of retail distribution to his hands.

The practices resorted to by aliens in the control of distribution, as already pointed out above, their secret manipulations of stocks of commodities and prices, their utter disregard of the welfare of their customers and of the ultimate happiness of the people of the nation of which they are mere guests, which practices, manipulations and disregard do not attend the exercise of the trade by the nationals, show the existence of real and actual, positive and fundamental differences between an alien and a national which fully justify the legislative classification adopted in the retail trade measure. These differences are certainly a valid reason for the State to prefer the national over the alien in the retail trade. We would be doing violence to fact and reality were we to hold that no reason or ground for a legitimate distinction can be found between one and the other.

b. *Difference in alien aims and purposes sufficient basis for distinction.* —

The above objectionable characteristics of the exercise of the retail trade by the aliens, which are actual and real, furnish sufficient grounds for legislative classification of retail traders into nationals and aliens. Some may disagree with the wisdom of the legislature's classification. To this we answer, that this is the prerogative of the law-making power. Since the Court finds that the classification is actual, real and reasonable, and all persons of one class are treated alike, and as it cannot be said that the classification is patently unreasonable and unfounded, it is in duty bound to declare that

the legislature acted within its legitimate prerogative and it can not declare that the act transcends the limit of equal protection established by the Constitution.

Broadly speaking, the power of the legislature to make distinctions and classifications among persons is not curtailed or denied by the equal protection of the laws clause. The legislative power admits of a wide scope of discretion, and a law can be violative of the constitutional limitation only when the classification is without reasonable basis. In addition to the authorities we have earlier cited, we can also refer to the case of *Linsey vs. Natural Carbonic Fas Co.* (1911), 55 L. ed., 369, which clearly and succinctly defined the application of equal protection clause to a law sought to be voided as contrary thereto:

> . . . . "1. The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of the wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis but is essentially arbitrary."

c. *Authorities recognizing citizenship as basis for classification. —*

The question as to whether or not citizenship is a legal and valid ground for classification has already been affirmatively decided in this jurisdiction as well as in various courts in the United States. In the case of *Smith Bell & Co. vs. Natividad*, 40 Phil. 136, where the validity of Act No. 2761 of the Philippine Legislature was in issue, because of a condition therein limiting the ownership of vessels engaged in coastwise trade to corporations formed by citizens of the Philippine Islands or the United States, thus denying the right to aliens, it was held that the Philippine Legislature did not violate the equal protection clause of the Philippine Bill of Rights. The legislature in enacting the law had as ultimate purpose the encouragement of Philippine shipbuilding and the safety for these Islands from foreign interlopers. We held that this was a valid exercise of the police power, and all presumptions are in favor of its constitutionality. In substance, we held that the limitation of domestic ownership of vessels engaged in coastwise trade to citizens of the Philippines does not violate the equal protection of the law and due process or law clauses of the Philippine Bill of Rights. In rendering said decision we quoted with approval the concurring opinion of Justice Johnson in the case of *Gibbons vs. Ogden*, 9 Wheat., I, as follows:

> "Licensing acts, in fact, in legislation, are universally restraining acts; as, for example, acts licensing gaming houses, retailers of spirituous liquors,

> etc. The act, in this instance, is distinctly of that character, and forms part of an extensive system, the object of which is to encourage American shipping, and place them on an equal footing with the shipping of other nations. Almost every commercial nation reserves to its own subjects a monopoly of its coasting trade; and a countervailing privilege in favor of American shipping is contemplated, in the whole legislation of the United States on this subject. It is not to give the vessel an American character, that the license is granted; that effect has been correctly attributed to the act of her enrollment. But it is to confer on her American privileges, as contra distinguished from foreign; and to preserve the Government from fraud by foreigners; in surreptitiously intruding themselves into the American commercial marine, as well as frauds upon the revenue in the trade coastwise, that this whole system is projected."

The rule in general is as follows:

> 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 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. 468-469.)

In *Commonwealth vs. Hana*, 81 N. E. 149 (Massachusetts, 1907), a statute on the licensing of hawkers and peddlers, which provided that no one can obtain a license unless he is, or has declared his intention, to become a citizen of the United States, was held valid, for the following reason: It may seem wise to the legislature to limit the business of those who are supposed to have regard for the welfare, good order and happiness of the community, and the court cannot question this judgment and conclusion. In *Bloomfield vs. State*, 99 N. E. 309 (Ohio, 1912), a statute which prevented certain persons, among them aliens, from engaging in the traffic of liquors, was found not to be the result of race hatred, or in hospitality, or a deliberate purpose to discriminate, but was based on the belief that an alien cannot be sufficiently acquainted with "our institutions and our life as to enable him to appreciate the relation of this particular business to our entire social fabric", and was not, therefore, invalid. In Ohio ex rel. *Clarke vs. Deckebach*, 274 U. S. 392, 71 L. ed. 115 (1926), the U.S. Supreme Court had under consideration an ordinance of the city of Cincinnati prohibiting the issuance of licenses (pools and billiard rooms) to aliens. It held that plainly irrational discrimination against aliens is prohibited, but 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 permitted classification, and that it could not state that the legislation is clearly wrong; and that latitude must be allowed for the legislative appraisement of local conditions and for the legislative choice of methods for controlling an apprehended evil. The case of *State vs. Carrol*, 124 N. E. 129 (Ohio, 1919) is a parallel case to the one at bar. In *Asakura vs. City of Seattle*, 210 P. 30 (Washington, 1922), the business of pawn brooking was considered as having tendencies injuring public interest,

and limiting it to citizens is within the scope of police power. A similar statute denying aliens the right to engage in auctioneering was also sustained in *Wright vs. May*, L.R.A., 1915 P. 151 (Minnesota, 1914). So also in *Anton vs. Van Winkle*, 297 F. 340 (Oregon, 1924), the court said that aliens are judicially known to have different interests, knowledge, attitude, psychology and loyalty, hence the prohibitions of issuance of licenses to them for the business of pawnbroker, pool, billiard, card room, dance hall, is not an infringement of constitutional rights. In *Templar vs. Michigan State Board of Examiners*, 90 N.W. 1058 (Michigan, 1902), a law prohibiting the licensing of aliens as barbers was held void, but the reason for the decision was the court's findings that the exercise of the business by the aliens does not in any way affect the morals, the health, or even the convenience of the community. In *Takahashi vs. Fish and Game Commission*, 92 L. ed. 1479 (1947), a California statute banning the issuance of commercial fishing licenses to person ineligible to citizenship was held void, because the law conflicts with Federal power over immigration, and because there is no public interest in the mere claim of ownership of the waters and the fish in them, so there was no adequate justification for the discrimination. It further added that the law was the outgrowth of antagonism toward the persons of Japanese ancestry. However, two Justices dissented on the theory that fishing rights have been treated traditionally as natural resources. In *Fraser vs. McConway & Tarley Co*., 82 Fed. 257 (Pennsylvania, 1897), a state law which imposed a tax on every employer of foreign-born unnaturalized male persons over 21 years of age, was declared void because the court found that there was no reason for the classification and the tax was an arbitrary deduction from the daily wage of an employee.

d. *Authorities contra explained*. —

It is true that some decisions of the Federal court and of the State courts in the United States hold that the distinction between aliens and citizens is not a valid ground for classification. But in this decision the laws declared invalid were found to be either arbitrary, unreasonable or capricious, or were the result or product of racial antagonism and hostility, and there was no question of public interest involved or pursued. In *Yu Cong Eng vs. Trinidad*, 70 L. ed. 1059 (1925), the United States Supreme Court declared invalid a Philippine law making unlawful the keeping of books of account in any language other than English, Spanish or any other local dialect, but the main reasons for the decisions are: (1) that if Chinese were driven out of business there would be no other system of distribution, and (2) that the Chinese would fall prey to all kinds of fraud, because they would be deprived of their right to be advised of their business and to direct its conduct. The real reason for the decision, therefore, is the court's belief that no public benefit would be derived from the operations of the law and on the other hand it would deprive Chinese of something indispensable for carrying on their business. In *Yick Wo vs. Hopkins*, 30 L. ed 220 (1885) an ordinance conferring powers on officials to withhold consent in the operation of laundries both as to persons and place, was declared invalid, but the court said that the power granted was arbitrary, that there was no reason for the discrimination which attended the administration and implementation of the law, and that the motive thereof was mere racial hostility. In *State vs. Montgomery*, 47 A. 165 (Maine, 1900), a law prohibiting aliens to engage as hawkers

and peddlers was declared void, because the discrimination bore no reasonable and just relation to the act in respect to which the classification was proposed.

The case at bar is radically different, and the facts make them so. As we already have said, aliens do not naturally possess the sympathetic consideration and regard for the customers with whom they come in daily contact, nor the patriotic desire to help bolster the nation's economy, except in so far as it enhances their profit, nor the loyalty and allegiance which the national owes to the land. These limitations on the qualifications of the aliens have been shown on many occasions and instances, especially in times of crisis and emergency. We can do no better than borrow the language of *Anton vs. Van Winkle*, 297 F. 340, 342, to drive home the reality and significance of the distinction between the alien and the national, thus:

> . . . . It may be judicially known, however, that alien coming into this country are without the intimate knowledge of our laws, customs, and usages that our own people have. So it is likewise known that certain classes of aliens are of different psychology from our fellow countrymen. Furthermore, it is natural and reasonable to suppose that the foreign born, whose allegiance is first to their own country, and whose ideals of governmental environment and control have been engendered and formed under entirely different regimes and political systems, have not the same inspiration for the public weal, nor are they as well disposed toward the United States, as those who by citizenship, are a part of the government itself. Further enlargement, is unnecessary. I have said enough so that obviously it cannot be affirmed with absolute confidence that the Legislature was without plausible reason for making the classification, and therefore appropriate discriminations against aliens as it relates to the subject of legislation. . . . .

VII. *The Due Process of Law Limitation.*

a. *Reasonability, the test of the limitation; determination by legislature decisive.* —

We now come to due process as a limitation on the exercise of the police power. It has been stated by the highest authority in the United States that:

> . . . . And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the subject sought to be attained. . . . .
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> x x x x x x x x x
>
> So far as the requirement of due process is concerned and in the absence of other constitutional restriction a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts

> are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court *functus officio*. . . . (Nebbia vs. New York, 78 L. ed. 940, 950, 957.)

Another authority states the principle thus:

> . . . . Too much significance cannot be given to the word "reasonable" in considering the scope of the police power in a constitutional sense, for the test used to determine the constitutionality of the means employed by the legislature is to inquire whether the restriction it imposes on rights secured to individuals by the Bill of Rights are unreasonable, and not whether it imposes any restrictions on such rights. . . .
>
> x x x x x x x x x
>
> . . . . A statute to be within this power must also be reasonable in its operation upon the persons whom it affects, must not be for the annoyance of a particular class, and must not be unduly oppressive. (11 Am. Jur. Sec. 302., 1:1)- 1074-1075.)

In the case of *Lawton vs. Steele*, 38 L. ed. 385, 388. it was also held:

> . . . . To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. . . .

Prata Undertaking Co. vs. State Board of Embalming, 104 ALR, 389, 395, fixes this test of constitutionality:

> In determining whether a given act of the Legislature, passed in the exercise of the police power to regulate the operation of a business, is or is not constitutional, one of the first questions to be considered by the court is whether the power as exercised has a sufficient foundation in reason in connection with the matter involved, or is an arbitrary, oppressive, and capricious use of that power, without substantial relation to the health, safety, morals, comfort, and general welfare of the public.

b. *Petitioner's argument considered. —*

Petitioner's main argument is that retail is a common, ordinary occupation, one of those privileges long ago recognized as essential to the orderly pursuant of happiness by free

men; that it is a gainful and honest occupation and therefore beyond the power of the legislature to prohibit and penalized. This arguments overlooks fact and reality and rests on an incorrect assumption and premise, i.e., that in this country where the occupation is engaged in by petitioner, it has been so engaged by him, by the alien in an honest creditable and unimpeachable manner, without harm or injury to the citizens and without ultimate danger to their economic peace, tranquility and welfare. But the Legislature has found, as we have also found and indicated, that the privilege has been so grossly abused by the alien, thru the illegitimate use of pernicious designs and practices, that he now enjoys a monopolistic control of the occupation and threatens a deadly stranglehold on the nation's economy endangering the national security in times of crisis and emergency.

The real question at issue, therefore, is not that posed by petitioner, which overlooks and ignores the facts and circumstances, but this, Is the exclusion in the future of aliens from the retail trade unreasonable. Arbitrary capricious, taking into account the illegitimate and pernicious form and manner in which the aliens have heretofore engaged therein? As thus correctly stated the answer is clear. The law in question is deemed absolutely necessary to bring about the desired legislative objective, i.e., to free national economy from alien control and dominance. It is not necessarily unreasonable because it affects private rights and privileges (11 Am. Jur. pp. 1080-1081.) The test of reasonableness of a law is the appropriateness or adequacy under all circumstances of the means adopted to carry out its purpose into effect (*Id.*) Judged by this test, disputed legislation, which is not merely reasonable but actually necessary, must be considered not to have infringed the constitutional limitation of reasonableness.

The necessity of the law in question is explained in the explanatory note that accompanied the bill, which later was enacted into law:

> This bill proposes to regulate the retail business. Its purpose is to prevent persons who are not citizens of the Philippines from having a strangle hold upon our economic life. If the persons who control this vital artery of our economic life are the ones who owe no allegiance to this Republic, who have no profound devotion to our free institutions, and who have no permanent stake in our people's welfare, we are not really the masters of our destiny. All aspects of our life, even our national security, will be at the mercy of other people.
>
> In seeking to accomplish the foregoing purpose, we do not propose to deprive persons who are not citizens of the Philippines of their means of livelihood. While this bill seeks to take away from the hands of persons who are not citizens of the Philippines a power that can be wielded to paralyze all aspects of our national life and endanger our national security it respects existing rights.
>
> The approval of this bill is necessary for our national survival.

If political independence is a legitimate aspiration of a people, then economic independence is none the less legitimate. Freedom and liberty are not real and positive if the people are subject to the economic control and domination of others, especially if not of their own race or country. The removal and eradication of the shackles of foreign economic control and domination, is one of the noblest motives that a national legislature may pursue. It is impossible to conceive that legislation that seeks to bring it about can infringe the constitutional limitation of due process. The attainment of a legitimate aspiration of a people can never be beyond the limits of legislative authority.

c. *Law expressly held by Constitutional Convention to be within the sphere of legislative action. —*

The framers of the Constitution could not have intended to impose the constitutional restrictions of due process on the attainment of such a noble motive as freedom from economic control and domination, thru the exercise of the police power. The fathers of the Constitution must have given to the legislature full authority and power to enact legislation that would promote the supreme happiness of the people, their freedom and liberty. On the precise issue now before us, they expressly made their voice clear; they adopted a resolution expressing their belief that the legislation in question is within the scope of the legislative power. Thus they declared the their Resolution:

> That it is the sense of the Convention that the public interest requires the nationalization of retail trade; but it abstain from approving the amendment introduced by the Delegate for Manila, Mr. Araneta, and others on this matter because it is convinced that the National Assembly is authorized to promulgate a law which limits to Filipino and American citizens the privilege to engage in the retail trade. (11 Aruego, The Framing of the Philippine Constitution, quoted on pages 66 and 67 of the Memorandum for the Petitioner.)

It would do well to refer to the nationalistic tendency manifested in various provisions of the Constitution. Thus in the preamble, a principle objective is the conservation of the patrimony of the nation and as corollary the provision limiting to citizens of the Philippines the exploitation, development and utilization of its natural resources. And in Section 8 of Article XIV, it is provided that "no franchise, certificate, or any other form of authorization for the operation of the public utility shall be granted except to citizens of the Philippines." The nationalization of the retail trade is only a continuance of the nationalistic protective policy laid down as a primary objective of the Constitution. Can it be said that a law imbued with the same purpose and spirit underlying many of the provisions of the Constitution is unreasonable, invalid and unconstitutional?

The seriousness of the Legislature's concern for the plight of the nationals as manifested in the approval of the radical measures is, therefore, fully justified. It would have been recreant to its duties towards the country and its people would it view the sorry plight of the nationals with the complacency and refuse or neglect to adopt a remedy commensurate with the demands of public interest and national survival. As the repository of the sovereign power of legislation, the Legislature was in duty bound to

face the problem and meet, through adequate measures, the danger and threat that alien domination of retail trade poses to national economy.

d. *Provisions of law not unreasonable. —*

A cursory study of the provisions of the law immediately reveals how tolerant, how reasonable the Legislature has been. The law is made prospective and recognizes the right and privilege of those already engaged in the occupation to continue therein during the rest of their lives; and similar recognition of the right to continue is accorded associations of aliens. The right or privilege is denied to those only upon conviction of certain offenses. In the deliberations of the Court on this case, attention was called to the fact that the privilege should not have been denied to children and heirs of aliens now engaged in the retail trade. Such provision would defeat the law itself, its aims and purposes. Beside, the exercise of legislative discretion is not subject to judicial review. It is well settled that the Court will not inquire into the motives of the Legislature, nor pass upon general matters of legislative judgment. The Legislature is primarily the judge of the necessity of an enactment or of any of its provisions, and every presumption is in favor of its validity, and though the Court may hold views inconsistent with the wisdom of the law, it may not annul the legislation if not palpably in excess of the legislative power. Furthermore, the test of the validity of a law attacked as a violation of due process, is not its reasonableness, but its unreasonableness, and we find the provisions are not unreasonable. These principles also answer various other arguments raised against the law, some of which are: that the law does not promote general welfare; that thousands of aliens would be thrown out of employment; that prices will increase because of the elimination of competition; that there is no need for the legislation; that adequate replacement is problematical; that there may be general breakdown; that there would be repercussions from foreigners; etc. Many of these arguments are directed against the supposed wisdom of the law which lies solely within the legislative prerogative; they do not import invalidity.

VIII. *Alleged defect in the title of the law*

A subordinate ground or reason for the alleged invalidity of the law is the claim that the title thereof is misleading or deceptive, as it conceals the real purpose of the bill which is to nationalize the retail business and prohibit aliens from engaging therein. The constitutional provision which is claimed to be violated in Section 21 (1) of Article VI, which reads:

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

What the above provision prohibits is duplicity, that is, if its title completely fails to appraise the legislators or the public of the nature, scope and consequences of the law or its operation (I Sutherland, Statutory Construction, Sec. 1707, p. 297.) A cursory consideration of the title and the provisions of the bill fails to show the presence of duplicity. It is true that the term "regulate" does not and may not readily and at first glance convey the idea of "nationalization" and "prohibition", which terms express the

two main purposes and objectives of the law. But "regulate" is a broader term than either prohibition or nationalization. Both of these have always been included within the term regulation.

> Under the title of an act to "regulate", the sale of intoxicating liquors, the Legislature may prohibit the sale of intoxicating liquors. (Sweet vs. City of Wabash, 41 Ind., 7; quoted in page 41 of Answer.)
>
> Within the meaning of the Constitution requiring that the subject of every act of the Legislature shall be stated in the tale, the title to regulate the sale of intoxicating liquors, etc." sufficiently expresses the subject of an act *prohibiting* the sale of such liquors to minors and to persons in the habit of getting intoxicated; such matters being properly included within the subject of regulating the sale. (Williams vs. State, 48 Ind. 306, 308, quoted in p. 42 of Answer.)
>
> The word "regulate" is of broad import, and necessarily *implies some degree of restraint* and prohibition of acts usually done in connection with the thing to be regulated. While word regulate does not ordinarily convey meaning of prohibit, there is no absolute reason why it should not have such meaning when used in delegating police power in connection with a thing the best or only efficacious regulation of which involves suppression. (State vs. Morton, 162 So. 718, 182 La. 887, quoted in p. 42 of Answer.)

The general rule is for the use of general terms in the title of a bill; it has also been said that the title need not be an index to the entire contents of the law (I Sutherland, Statutory Construction, See. 4803, p. 345.) The above rule was followed the title of the Act in question adopted the more general term "regulate" instead of "nationalize" or "prohibit". Furthermore, the law also contains other rules for the regulation of the retail trade which may not be included in the terms "nationalization" or "prohibition"; so were the title changed from "regulate" to "nationalize" or "prohibit", there would have been many provisions not falling within the scope of the title which would have made the Act invalid. The use of the term "regulate", therefore, is in accord with the principle governing the drafting of statutes, under which a simple or general term should be adopted in the title, which would include all other provisions found in the body of the Act.

One purpose of the constitutional directive that the subject of a bill should be embraced in its title is to apprise the legislators of the purposes, the nature and scope of its provisions, and prevent the enactment into law of matters which have received the notice, action and study of the legislators or of the public. In the case at bar it cannot be claimed that the legislators have been appraised of the nature of the law, especially the nationalization and the prohibition provisions. The legislators took active interest in the discussion of the law, and a great many of the persons affected by the prohibitions in the law conducted a campaign against its approval. It cannot be claimed, therefore, that the reasons for declaring the law invalid ever existed. The objection must therefore, be overruled.

IX. *Alleged violation of international treaties and obligations*

Another subordinate argument against the validity of the law is the supposed violation thereby of the Charter of the United Nations and of the Declaration of the Human Rights adopted by the United Nations General Assembly. We find no merit in the Nations Charter imposes no strict or legal obligations regarding the rights and freedom of their subjects (Hans Kelsen, The Law of the United Nations, 1951 ed. pp. 29-32), and the Declaration of Human Rights contains nothing more than a mere recommendation or a common standard of achievement for all peoples and all nations (*Id*. p. 39.) That such is the import of the United Nations Charter aid of the Declaration of Human Rights can be inferred the fact that members of the United Nations Organizations, such as Norway and Denmark, prohibit foreigners from engaging in retail trade, and in most nations of the world laws against foreigners engaged in domestic trade are adopted.

The Treaty of Amity between the Republic of the Philippines and the Republic of China of April 18, 1947 is also claimed to be violated by the law in question. All that the treaty guarantees is equality of treatment to the Chinese nationals "upon the same terms as the nationals of any other country." But the nationals of China are not discriminating against because nationals of all other countries, except those of the United States, who are granted special rights by the Constitution, are all prohibited from engaging in the retail trade. But even supposing that the law infringes upon the said treaty, the treaty is always subject to qualification or amendment by a subsequent law (U. S. vs. Thompson, 258, Fed. 257, 260), and the same may never curtail or restrict the scope of the police power of the State (plaston vs. Pennsylvania, 58 L. ed. 539.)

X. *Conclusion*

Resuming what we have set forth above we hold that the disputed law was enacted to remedy a real actual threat and danger to national economy posed by alien dominance and control of the retail business and free citizens and country from dominance and control; that the enactment clearly falls within the scope of the police power of the State, thru which and by which it protects its own personality and insures its security and future; that the law does not violate the equal protection clause of the Constitution because sufficient grounds exist for the distinction between alien and citizen in the exercise of the occupation regulated, nor the due process of law clause, because the law is prospective in operation and recognizes the privilege of aliens already engaged in the occupation and reasonably protects their privilege; that the wisdom and efficacy of the law to carry out its objectives appear to us to be plainly evident — as a matter of fact it seems not only appropriate but actually necessary — and that in any case such matter falls within the prerogative of the Legislature, with whose power and discretion the Judicial department of the Government may not interfere; that the provisions of the law are clearly embraced in the title, and this suffers from no duplicity and has not misled the legislators or the segment of the population affected; and that it cannot be said to be void for supposed conflict with treaty obligations because no treaty has actually been entered into on the subject and the police power may not be curtailed or surrendered by any treaty or any other conventional agreement.

Some members of the Court are of the opinion that the radical effects of the law could have been made less harsh in its impact on the aliens. Thus it is stated that the more time should have been given in the law for the liquidation of existing businesses when the time comes for them to close. Our legal duty, however, is merely to determine if the law falls within the scope of legislative authority and does not transcend the limitations of due process and equal protection guaranteed in the Constitution. Remedies against the harshness of the law should be addressed to the Legislature; they are beyond our power and jurisdiction.

The petition is hereby denied, with costs against petitioner.

Paras, C.J., Bengzon, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.

Separate Opinions

PADILLA, *J.,* concurring and dissenting:

I agree to the proposition, principle or rule that courts may not inquire into the wisdom of an the Act passed by the Congress and duly approved by the President of the Republic. But the rule does not preclude courts from inquiring and determining whether the Act offends against a provision or provisions of the Constitution. I am satisfied that the Act assailed as violative of the due process of law and the equal protection of the laws clauses of the Constitution does not infringe upon them, insofar as it affects associations, partnership or corporations, the capital of which is not wholly owned by the citizens of the Philippines, and aliens, who are not and have not been engaged in the retail business. I am, however, unable to persuade myself that it does not violate said clauses insofar as the Act applies to associations and partnerships referred to in the Act and to aliens, who are and have heretofore been engaged in said business. When they did engage in the retail business there was no prohibition on or against them to engage in it. They assumed and believed in good faith they were entitled to engaged in the business. The Act allows aliens to continue in business until their death or voluntary retirement from the business or forfeiture of their license; and corporations, associations or partnership, the capital of which is not wholly owned by the citizens of the Philippines to continue in the business for a period of ten years from the date of the approval of the Act (19 June 1954) or until the expiry of term of the existence of the association or partnership or corporation, whichever event comes first. The prohibition on corporations, the capital of which is not wholly owned by citizens of the Philippines, to engage in the retail business for a period of more than ten years from the date of the approval of the Act or beyond the term of their corporate existence, whichever event comes first, is valid and lawful, because the continuance of the existence of such corporations is subject to whatever the Congress may impose reasonably upon them by subsequent legislation.[1] But the prohibition to engage in the retail business by associations and partnerships, the capital of which is not wholly owned by citizen of the Philippines, after ten years from the date of the approval of the Act, even before the end

of the term of their existence as agreed upon by the associates and partners, and by alien heirs to whom the retail business is transmitted by the death of an alien engaged in the business, or by his executor or administrator, amounts to a deprivation of their property without due process of law. To my mind, the ten-year period from the date of the approval of the Act or until the expiration of the term of the existence of the association and partnership, whichever event comes first, and the six-month period granted to alien heirs of a deceased alien, his executor or administrator, to liquidate the business, do not cure the defect of the law, because the effect of the prohibition is to compel them to sell or dispose of their business. The price obtainable at such forced sale of the business would be inadequate to reimburse and compensate the associates or partners of the associations or partnership, and the alien heirs of a deceased alien, engaged in the retail business for the capital invested in it. The stock of merchandise bought and sold at retail does not alone constitute the business. The goodwill that the association, partnership and the alien had built up during a long period of effort, patience and perseverance forms part of such business. The constitutional provisions that no person shall be deprived of his property without due process of law[2] and that no person shall be denied the equal protection of the laws[3] would have no meaning as applied to associations or partnership and alien heirs of an alien engaged in the retail business if they were to be compelled to sell or dispose of their business within ten years from the date of the approval of the Act and before the end of the term of the existence of the associations and partnership as agreed upon by the associations and partners and within six months after the death of their predecessor-in-interest.

The authors of the Constitution were vigilant, careful and zealous in the safeguard of the ownership of private agricultural lands which together with the lands of the public domain constitute the priceless patrimony and mainstay of the nation; yet, they did not deem it wise and prudent to deprive aliens and their heirs of such lands.[4]

For these reasons, I am of the opinion that section 1 of the Act, insofar as it compels associations and partnership referred to therein to wind up their retail business within ten years from the date of the approval of the Act even before the expiry of the term of their existence as agreed upon by the associates and partners and section 3 of the Act, insofar as it compels the aliens engaged in the retail business in his lifetime his executor or administrator, to liquidate the business, are invalid, for they violate the due process of law and the equal protection of the laws clauses of the Constitution.