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Cordova's payment of ₱450 as the undertaker's bill for the funeral of the deceased driver (p. 16, *Rollo*) may be construed as an admission that he has some moral obligation in connection with the death of the cab driver who, however, *was directly employed by his partner, Edrosolano*. It seems that there was no privity of contract between Cordova and the deceased driver.

Hence, Cordova was not his employer and, therefore, was not liable to pay workmen's compensation to his heirs who entered into a compromise with the killer, Luis Jimenea, by accepting from him ₱4,750 as settlement of the criminal case for homicide through reckless imprudence against Jimenea (p. 19, Cordova's brief herein).

SECOND DIVISION

[G.R. No. L-39699. March 14, 1979]

SAN MIGUEL CORPORATION, *petitioner, vs.* **HON. CELSO AVELINO, Presiding Judge of the Court of First Instance of Cebu, Branch XIII, and the City of Mandaue,** *respondents.*

SYLLABUS

1. ***POLITICAL LAW; JUDICIARY; POWER OF JUDICIAL REVIEW; CONSTRUED.*** — In *Marbury v. Madison*, "Cranch 137 (1803) the American Supreme Court, through Chief Justice Marshall enunciated the principle of judicial review thus: "It is emphatically the province and duty of the judicial department to say what the law is."

2. **ID.; ID.; ID.; INCLUDES JURISDICTION TO PASS UPON THE VALIDITY OF LEGISLATIONS.** — The validity of a statute, an executive order or ordinance is a matter for the judiciary to decide and that whenever in the disposition of a pending case

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such a question becomes unavoidable, then it is not only the power but the duty of the Court to resolve such a question.

3. ID.; ID.; ID.; INTERPRETATION OF LEGISLATION; SHOULD FAVOR THAT WHICH GIVES IT THE GREATER CHANCE OF SURVIVING THE TEST OF CONSTITUTIONALITY. — To construe that a suit for collection cannot be viewed as the appeal provided in Sec. 47 of the Local Tax Code would be to raise a serious constitutional question. For it would in effect bar what otherwise would be a proper case cognizable by a court precisely in the exercise of the conceded power of judicial review just because the procedure contended for which is that of an "appeal," under the circumstances a term vague and ambiguous, was not followed. Petitioner may not be sufficiently award of the implications of such a proposition. It would run counter to the well-settled doctrine that between two possible modes of construction, the one which would not be in conflict with what is ordained by the Constitution is to be preferred. Every intendment of the law should lean towards its validity, not its invalidity. The judiciary, as noted by Justice Douglas, in *Ex parte Endo*, 323, US283, 300 (1944), should favor "that interpretation of legislation which gives it the greater chance of surviving the test of constitutionality.

4. ID.; ID.; ID.; PRESUMPTION OF VALIDITY OF STATUTES. — The finding by the then Acting Secretary of Justice that the ordinance in question (Mandaue City Tax Code) was of "doubtful validity" is far from a categorical declaration of its being repugnant to the Constitution or its being *ultra vires*. That betrays a realization that unless and until the judiciary speaks in no uncertain terms, the presumption of validity continues. Misgivings as to the livelihood of an alleged infringement of any binding norm do not suffice. Justice Malcolm, in *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 414 (1925) said: "To doubt is to sustain." That is merely to accord recognition to the well-settled and binding doctrine that only in a very clear case is the judiciary justified in nullifying a statute, decree or ordinance.

APPEARANCES OF COUNSEL

Gadioma & Colon for petitioner.

Lorenzo A. Parandiang Jr. and *Amadeo D. Seno* for respondent City of Mandaue.

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DECISION

FERNANDO, *J.*:

It is understandable for petitioner San Miguel Corporation to expect the speedy determination of its claim that the challenged ordinance of respondent City of Mandaue[1] imposing a specific tax should be nullified. Hence its concern at the failure of respondent Judge Celso Avelino of the Court of First Instance of Cebu, Branch XIII, to grant its motion to dismiss on the ground of lack of jurisdiction a complaint for the collection of such tax filed by respondent City. The challenged order reads as follows: "Acting on the [motion to dismiss] filed by the defendant through counsel on October 11, 1974 and the [opposition] thereto filed by the plaintiff through counsel on October 17, 1974, the Court finds no justifiable reason in dismissing the Complaint at this stage of the proceedings and hereby denies said motion."[2] Offhand, it would not be easy to assail its correctness, manifesting as it does caution and care in ascertaining the principal question involved in the suit for the collection of the specific tax, which is its validity. It is undoubted that under the Constitution, even the legislative body cannot deprive this Court of its appellate jurisdiction over all cases coming from inferior courts where the constitutionality or validity of an ordinance or the legality of any tax, impost, assessment, or toll is in question.[3] Since it is likewise expressly provided in Section 43 of the Judiciary Act that the original jurisdiction over all civil actions involving

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[1] Ordinance No. 97, Section 12 (1973).

[2] Petition, Annex H.

[3] According to Article X, Section 5, par. (2) of the Constitution: "The Supreme Court shall have the following powers: . . . (2) Review and revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in — (a) all cases in which the constitutionality or validity of any treaty, executive agreement, law, ordinance, or executive order or regulation is in question, (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto." Under the 1935 Constitution, the equivalent provision is found in Article VIII, Section 2, pars. (1) and (2).

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the legality of any tax, impost or assessment appertains to the Court of First Instance,[4] it takes a certain degree of ingenuity to allege that the lower court was bereft of such authority. Counsel for petitioner, Attorney Demosthenes B. Gadioma, both in the petition and in his scholarly and exhaustive memorandum, did seek to impart plausibility to a suit of this character by relying not so much on the alleged *ultra vires* or constitutional infirmity of the ordinance but rather on the failure of respondent City to follow the procedure set forth in the Local Tax Code.[5] It was contended that there was a finding of invalidity by the then Acting Secretary of Justice, at present the Acting Minister of Justice, Catalino Macaraig, Jr. There is inaccuracy in such a characterization as the actual phrase used by such dignitary is that it "is of doubtful validity."[6] The argument pressed is that a suit for collection is not the appeal provided for in the last sentence of Section 47: "The decision of the Secretary of Justice shall be final and executory unless, within thirty days upon receipt thereof, the aggrieved party contents the same in a court of competent jurisdiction."[7] Respondent City disagrees. It is its submission that the suit for collection cannot be viewed other than as an appeal. The aggrieved party, here respondent City, in the suit for collection, did definitely contest the correctness of the decision of the Secretary of Justice in a court of competent jurisdiction — this, even on the assumption that there was a finding of invalidity. The statutory purpose is thus satisfied. Such an action is in accordance with the traditional and appropriate procedure to test the legality of a statute, decree, or ordinance.

This Court finds such an approach persuasive. It conforms to the authoritative principle that the question of validity is for the judiciary to decide. As far back as the leading case of *Marbury v. Madison*,[8] where the American Supreme Court enunciated the principle of judicial review, Chief Justice Marshall

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[5] Presidential Decree No. 231, Section 47 (1973).

[6] Petition, par. 7 and Annex E.

[7] Last sentence of PD 231, Section 47.

[8] 1 Cranch 137 (1803).

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stressed: "It is emphatically the province and duty of the judicial department to say what the law is."[9] That was precisely what was done by respondent City. It has likewise in its favor the fact that even the very decision of the Acting Secretary of Justice relied upon did not squarely rule on the validity of the ordinance but only on its "doubtful character." The writs prayed for, *certiorari* and prohibition, cannot issue.

The facts are undisputed. Respondent City, in accordance with Presidential Decree No. 231, enacted in 1973, to take effect on January 1, 1974, the challenged ordinance, otherwise known as the Mandaue City Tax Code. The City Treasurer, on April 1, 1974, demanded from petitioner payment of the said specific tax on the total volume of beer it produced in the City of Mandaue. Petitioner, on April 8, 1974, contested the collection of said specific tax "on the ground that Section 12(e) (7) in relation to Section 12(e) (1) and (2), Mandaue City Ordinance No. 97, is illegal and void because it imposed a specific tax beyond its territorial jurisdiction." The matter was then referred by respondent City to its City Fiscal, pursuant to such Presidential Decree. Its validity was sustained. Then came the appeal to the Secretary of Justice, with the then Acting Secretary of Justice Macaraig, as noted, rendering the opinion that it is "of doubtful validity." A suit for collection was thereafter filed by the City where it squarely put in issue the validity of such ordinance, thus contesting the opinion of the Acting Secretary of Justice.

The crucial issue from the petitioner's standpoint is whether the filing of such action after such opinion was rendered may be considered "an appeal" under the Presidential Decree. Hence the motion to dismiss by petitioner, which was denied, respondent Judge finding "no justifiable reason at [that] stage of the proceedings,"[10] resulting in this petition for *certiorari* and prohibition.

To repeat, the petition must fail. The writs prayed for cannot be granted.

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[9] *Ibid*, 175.

[10] Petition, Annex H.

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1. Tersely and bluntly put, petitioner would deny the jurisdiction of respondent Judge to pass upon the validity of a challenged ordinance in an appropriate action. To say the least, there is unorthodoxy in such an approach. What immediately calls attention is its novelty. It is opposed to and is not in conformity with the accepted juridical norm that the validity of a statute, an executive order or ordinance is a matter for the judiciary to decide and that whenever in the disposition of a pending case such a question becomes unavoidable, then it is not only the power out the duty of the Court to resolve such a question. In the pending suit by respondent City, sought to be dismissed by petitioner corporation, it specifically prayed "that Ordinance No. 97, Series of 1973, of the herein plaintiff is valid, legal, and enforceable in accordance with law; ***."[11] Since both under the Constitution and the Judiciary Act, respondent Judge is vested with jurisdiction to make such a declaration, it would be, at the very least, premature for the corrective power of this Tribunal to be interposed, just because he did not, "at [that] stage of the proceedings," grant the motion to dismiss on the allegation that there was lack of jurisdiction. The authorities support squarely the procedure followed by respondent City to remove doubts as to the validity of the ordinance in question.[12] Even more in point are these two decisions with reference to the municipal power to impose specific taxes on beverages manufactured within its territorial boundaries, *City of Bacolod v. Gruet*,[13] and *City of Naga v. Court of Appeals*.[14] It is worth mentioning that in the first case cited, the entity involved is

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[11] Petition, Annex F.

[12] To speak of recent cases alone, the following may be cited: *Yu King v. City of Zamboanga*, L-20406, Dec. 29, 1966, 18 SCRA 1241; *Ormoc Sugar Co., Inc. v. Municipal Board of Ormoc City*, L-24322, July 21, 1967, 20 SCRA 739; *Villanueva v. City of Iloilo*, L-26521, Dec. 28, 1968, 26 SCRA 578; *Serafica v. Treasurer of Ormoc City*, L-24813, April 28, 1969, 27 SCRA 1108; *Procter and Gamble Trading Co. v. Municipality of Medina*, L-29125, Jan. 31, 1972, 43 SCRA 130; *City of Bacolod v. Enriquez*, L-27408, July 25, 1975, 65 SCRA 381.

[13] 117 Phil. 181 (1963).

[14] L-24954, August 14, 1968, 24 SCRA 594.

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petitioner corporation, then known as San Miguel Brewery, Inc., defendant and appellant Gruet being sued in his capacity as manager of its Coca-Cola Plant in Bacolod City.

2. There is this reinforcement to the conclusion reached. To so construe Section 47 would be to raise a serious constitutional question. For it would in effect bar what otherwise would be a proper case cognizable by a court precisely is the exercise of the conceded power of judicial review just because the procedure contended for which is that of an "appeal," under the circumstances a term vague and ambiguous, was not followed. Petitioner may not be sufficiently aware of the implications of such a proposition. It would run counter to the well-settled doctrine that between two possible modes of constructions, the one which would not be in conflict with what is ordained by the Constitution is to be preferred. Every intendment of the law should lean towards its validity, not its invalidity.[15] The judiciary, as noted by Justice Douglas, should favor "that interpretation of legislation which gives it the greater chance of surviving the test of constitutionality."[16]

3. The inherent weakness of this suit for *certiorari* and prohibition is likewise discernible from the fact that the then Acting Secretary of Justice Macaraig limited himself to a finding that the ordinance in question was "of doubtful validity."[17] That is far from a categorical declaration of its being repugnant to the Constitution or its being *ultra vires*. That betrays a realization that unless and until the judiciary speaks in no uncertain terms, the presumption of validity continues. Misgivings as to the likelihood of an alleged infringement of any binding norm do not suffice. There is this aphorism from Justice Malcolm: "To doubt is to sustain."[18] That is merely to accord recognition to

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[15] Cf. *In re Guariña*, 24 Phil. 37 (1913); *Radiowealth v. Agregardo*, 86 Phil. 429 (1950); *Sanchez v. Lyon Construction*, 87 Phil. 309 (1950); *Uy v. Genato*, L-37399, May 29, 1974, 57 SCRA 123.

[16] *Ex parte Endo*, 323 US 283, 300 (1944).

[17] Petition, par. 7 and Annex E.

[18] *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 414 (1925).

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the well-settled and binding doctrine that only in a very clear case is the judiciary justified in nullifying a statute, decree, or ordinance.

4. One last word. The decision certainly does not extend to any determination by this Court as to the validity, or lack of it, of the assailed ordinance. To do so would be, at the very least, premature. That is a function for the lower court to perform.

WHEREFORE, the petition is dismissed. The hearing of the case before respondent Judge should be conducted as speedily as circumstances permit. Costs against petitioner.

Barredo, Antonio, Aquino, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-42995. March 14, 1979]

VICTOR N. LIZARDO, *petitioner, vs.* **WORKMEN'S COMPENSATION COMMISSION; REPUBLIC OF THE PHILIPPINES (BUREAU OF PRISONS),** *respondents.*

SYLLABUS

1. **LEGAL AND SOCIAL LEGISLATION; WORKMEN'S COMPENSATION; PRESUMPTION OF COMPENSABILITY; BURDEN OF PROOF RESTS UPON THE EMPLOYER.** — Where the employee was physically and mentally healthy when he entered the government service, his illness contracted during the latter part of his service shall be considered to have supervened in the course of his employment; and he shall have in his favor the statutory presumption that his claim is compensable, and the burden is shifted to the employer to show by substantial