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RECENT DECISIONS OF THE SUPREME COURT REVIEWED

NOTE:—On account of its importance, the case of Nicolas vs. Alberto is herein reproduced in full. The Government has appealed it to the U. S. Supreme Court inasmuch as the decision completely alters a practice long followed by the Governor General's office.

Bonifacio Nicolas vs. Severino Alberto, G. R. No. 28275, Jan. 10, 1928. Malcolm, J.:—This is an action of *quo warranto* originally brought in this Court to determine the respective rights of the plaintiff and the defendant to the office of justice of the peace of Angat, Bulacan. The question at issue is the legal right of the Governor-General to transfer a justice of the peace of one municipality to another municipality, without the advice and consent of the Philippine Senate.

The facts are stipulated. Bonifacio Nicolas, the plaintiff, on February 9, 1920, was appointed justice of the peace of Angat, Bulacan, by the Governor-General, with the advice and consent of the Philippine Senate. Plaintiff qualified for the office shortly thereafter. He exercised its functions up to August 18, 1927, when he was forced to surrender possession to defendant.

Severino Alberto, the defendant, on February 28, 1918, was appointed justice of the peace of San Jose del Monte, Bulacan, by the Governor-General, with the advice and consent of the Phiippine Senate. Defendant qualified for and exercised the functions of the office from the date mentioned to August 19, 1927, when he received an order transferring him to the office of justice of the peace of Angat, Bulacan. Since then, he has acted as justice of the peace of the latter municipality.

It appears further that on April 1, 1927, an administrative complaint was filed by the municipal president of Angat, Bulacan, against plaintiff. The charges were duly investigated by the Judge of First Instance of Bulacan. Judge Teodoro decided to dismiss the complaint with a public reprimand so that the justice of the peace might "avoid hereafter giving cause for suspicion regarding partisanship and favoring any stated political party in Angat." The municipal president of Angat and about three hundred sympathizers appealed from this decision to the Governor-General. On receipt of the communication, the Secretary to the Governor-General endorsed the papers to the Secretary of Justice "with the infor-

mation that the records of this office show that the investigation was regular and in order and that the case is closed. However, in view of the friction which exists, His Excellency, the Governor-General believes it would be advisable to transfer this Justice of the Peace to another municipality when opportunity arises." Then on July 2, 1927, the Acting Governor-General, without the advice and consent of the Philippine Senate, and purporting to act "Pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice," ordered the transfer of Bonifacio Nicolas "from the position of Justice of the Peace of the municipality of Angat, Province of Bulacan, to the same position in the municipality of San Jose del Monte, same province." As of equal date, the Acting Governor-General, likewise without the confirmation of the Philippine Senate, transferred Severino Alberto, justice of the peace of San Jose del Monte, to Angat.

Plaintiff protested against the transfer. He petitioned the Governor-General twice to reconsider it. He has persistently refused to accept designation to San Jose del Monte. On the other hand, the defendant signified his willingness to accept the transfer to Angat and to assume the office of justice of the peace there. Plaintiff only gave up possession of the position of justice of the peace of Angat when peremptorily ordered to do so by the Judge of First Instance of Bulacan. Even then, plaintiff protested against delivering his office to the defendant. The Governor-General has denied the plaintiff's petitions for reconsideration.

The Court is not concerned with the merits of the complaints against Bonifacio Nicolas as Justice of the peace of Angat, Bulacan. It is sufficient for our purposes to know that the investigation of Bonifacio Nicolas was regular; that the decision dismissed the charges with a reprimand; that the case was considered closed; and that he was not removed from office. Likewise, matters of expediency are out of place. The Court should be mindful of no consideration other than an earnest desire to give just application of the law to the admitted facts.

The law provides that "One justice of the peace and one auxiliary justice of the peace shall be appointed by the Governor-General, with the advice and consent of the Philippine Senate for * * * each municipality, * * * in the Philippine Islands * * * " (Administrative Code, sec. 203; Act 3107, sec. 1). When a vacancy occurs in the office of any justice of the peace, except in provincial capitals and first-class municipalities, the Judge of the Court of First Instance of the district forwards to the Governor-General a list of names of persons qualified to fill the vacancy. Thereupon the "Governor-General, with the advice and consent of the Philippine Senate, shall make the respective appointments from said list." (Adm. Code, sec. 210; Act 3107, sec. 1.) A justice of the peace may, following an investigation by the Judge of First Instance, be reprimanded, or the Judge of First Instance may recommend to the Governor-General his removal from office, or his removal and disqualification from holding office and may suspend him from office pending action by the Governor-General. "The Governor-General may, upon such recommendation or on his own motion, remove from office any justice of the peace or auxiliary justice of the peace." (Ad. Code, sec. 229.)

It is thus incontestible that an appointment of a justice of the peace is made by the Governor-General, with the advice and consent of the Philippine Senate. A removal of the justice of the peace, on the other hand,

is made by the Governor-General, without the advice and consent of the Philippine Senate. Interlocked by these two principles stands section 206 of the Administrative Code which, before amendment, provided: "A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice." Act 2768 amended said section 206 of the Administrative Code by addin the proviso "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another." The proviso was inserted in the law, so it has been said, not to give power to appoint justices of the peace to other municipalities without further confirmation from the Senate, but to assert the right of the Government to transfer justices of the peace from one jurisdiction to another even without their consent. (See Araneta's I Administrative Code, p. 350.)

Let us notice again the wording of the amended section 206 of the Administrative Code. The body of the section sanctions the holding of office by justices of the peace during good behavior. The proviso qualifies this by providing "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another." At once it is noted that the law is silent as to the office or entity which may make the transfer. The law does not say may be transferred "by the Governor-General." The insertion of the words "by the Philippine Senate" would be as justifiable. The more reasonable inference, indeed the only possible legal inference permissible without violating the constitution, is that the justice of he peace may be transferred by the exercise of the appointing power, and the appointing power consists of the Governor-General acting in conjunction with the Philippine Senate.

That is all there is to the case. Just some conceded facts calling for the application of the law. Logically we should stop here. But we proceed to ascertain the meaning of the proviso to codal section 206 by fitting the proviso into the general scheme of the law.

The justice of the peace is appointed to a specific municipality. The only legal method by which the appointment can be made is by the Governor-General, with the advice and consent of the Philippine Senate. Any other attempted method intended to provide for an appointment through subterfuge or evasion would be in clear violation of organic law. The Organic Act, the Act of Congress of August 29, 1916, in section 21 provides that the Governor-General "shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this act to appoint, or whom he may hereafter be authorized by law to appoint." When the Organic Act was approved, section 206 of the Administrative Code, unamended, was on the statute books. It was thus beyond the power of the Philippine Legislature by the enactment of Act 2768 or any other Act or of the Governor-General by enforcement or wrong construction to detract from the provisions of law which had been confirmed by the Organic Act.

A justice of the peace is placed in a certain municipality by the Governor-General, with the advice and consent of the Philippine Senate. The justice of the peace in any other municipality receives his office from the same source. They serve during good behavior. The only method by which either of them can be gotten out of their positions is by removal. When a vacancy in the position of justice of the peace of any given muni-

cipality occurs; the vacant office can only be filled by appointment, that is, by the Governor-General, with the advice and consent of the Philippine Senate.

The justice of the peace gets in by appointment. He gets out by removal. There is no half-way in or out method. A transfer of a justice of the peace outside of the municipality to which he was appointed is, in legal effect, a combined removal and appointment. A forced transfer creates a permanent vacancy. One phase in the transfer is tantamount to appointment. The removal does not need the consent of the Senate. The appointment does need that consent. What may not be done directly may not be permitted to be done indirectly.

The previous decisions of this Court intended to safeguard the independence of the judiciary should not be departed from without good reason. In the well known cases of Borromeo v. Mariano (1921) 41 Phil. 322, and Concepcion v. Paredes (1921) 42 Phil. 599, it was announced, as to Judges of First Instance, that they are not appointed Judges of First Instance of the Philippine Islands but are appointed Judges of the Courts of First Instance of the respective judicial districts of the Philippine Islands. They hold these positions of Judges of First Instance of definite districts, it was said, until they either resign, reach the age of retirement, or are removed through impeachment proceedings. That was the doctrine of the majority decisions. But even under the thesis of the learned dissenting opinion in Borromeo v. Mariano, *supra*, it was still sustained that a new appointment by the Governor-General, with the advice and consent of the Philippine Senate, would be necessary to make a valid transfer. Mr. Justice Villamor said: "* * * the executive power to effect transfers of judges is subject to the approval of a restraining body, * * * the Senate * * *. According to law, the Governor-General has the discretion to make transfers of judges * * * with the consent of the Senate." In Concepcion v. Paredes, *supra*, where the attempt to secure a transfer of judges by drawing of lots was thwarted, it was further said that "there can be no valid appointment to an office so long as the appointing power, in this instance the Governor-General and the Philippine Senate, and not the Secretary of Justice, is not exercised. * * * The law before us would require a drawing of lots for judicial positions, while the organic law would require selection for judicial positions by the Governor-General with the assent of the Philippine Senate."

The same doctrine has been used to keep the legislative branch from the trespassing on the executive domain. Recent examples come readily to mind. For instance, the Philippine Senate, with power to punish an appointive Senator for disorderly behavior but without power to remove him, sought to get around the law by decreeing a suspension for one year, but this Court in both majority and minority opinions held that the suspension was equivalent to expulsion and could not be sanctioned. (Alejadrino v. Quezon (1924) 46 Phil. 83.)

What we now have to do is to carry forward the same principle and, applying it just as serenely, protect a branch of the Legislature from an absorption of its power by the Chief Executive. Facts change but principles remain immutable.

The Attorney-General endeavors to demonstrate the purpose of the Legislature by citing the legislative history of the bill which later became Act No. 2768. The Attorney-General shows that when the house bill was

submitted to the Senate an amendment was approved by inserting the following: "siempre que su nombramiento, en virtud del traslado, sea confirmado por el Senado." Later the amendment was eliminated and the bill approved in its present form. It may, therefore, be that the Legislature had in view, by refusing to accept the amendment, precisely what is now contended for, which is to place the power of transfer in the hands of the Governor-General without legislative restriction. An equally permissible supposition is that the Legislature thought the amendment unnecessary and superfluous because of the plain meaning of the bill without it. The subject is so confused that no help can be derived from this source.

The representatives of the Attorney-General also offer an argument which, we are sure, the law officer of the Government, on further reflection, would not desire to sanction. It is said that "It is not pertinent to claim for the justices of the peace that judicial independence which is often invoked for judges of first instance. It is within the judicial knowledge of this Honorable Court that justices of the peace in the Philippine Islands are not equipped with the same mental and moral qualifications as judges of first instance and that their conduct in office in many instances leaves much to be desired." But the mental or moral equipment of the incumbents of the office and their conduct while in office, are entirely beside the question. A justice of the peace is a member of the judiciary. Of that office, this Court has said that it "is one both ancient and honorable * * * The justice of the peace has become an important judicial officer." (Narcida v. Bowen (1912) 22 Phil. 365.) The humble occupant of the office of justice of the peace in the most remote and insignificant municipality is entitled to the same measure of respect as any member of this tribunal. A marshalling of justices of the peace to march at the command of the Chief Executive would constitute just as effective interference with judicial independence as would a similar attempt to transfer a member of the Supreme Court to some other jurisdiction.

We decide the question by holding that in case the public interest requires it, a justice of the peace of one municipality may be transferred to another only by the Governor-General, with the advice and consent of the Philippine Senate. Hence, it results in a decision to the effect that the plaintiff is lawfully entitled to the office of justice of the peace of Angat, Bulacan.

Judgment shall issue ousting the defendant from the office of justice of the peace of Angat, Bulacan, and placing the plaintiff in possession of the same. Without any finding as to costs, it is so ordered.

We concur:

Ramon Avanceña, James A. Ostrand, Charles A. Johns, Norberto Romualdez, Antonio Villa-Real.

Johnson, J., dissenting:

The majority opinion is the boldest piece of judicial legislation to be found in the annals of jurisprudence.

The only question presented to this Court for solution is: May the Governor-General transfer a Justice of the Peace from one municipality to another?

Section 206 of the Administrative Code of 1917 provides that "a justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the juris-

diction of some other justice (of the peace): Provided, that in case the public interest requires it, a justice of the peace of one municipality may be transferred to another."

Said section 206 now reads, by virtue of the judicial legislation, as follows: "A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice (of the peace): Provided, that in case the public interest requires it a justice of the peace of one municipality may be transferred to another;" and provided, further, that in case the public interest requires it a justice of the peace of one municipality may be transferred to another, *by the advice and consent of the Philippine Senate.*

The majority opinion has done, by judicial legislation, exactly what the legislature itself refused to do when that question was squarely presented to it. Recently an effort was made by the Philippine Senate to amend said section 206, by adding a proviso thereto, "that in case the public interest requires it a justice of the peace of one municipality may be transferred to another *by the advice and consent of the Senate.*" But such amendment was rejected. The Court, in the majority opinion, has now done exactly what the Philippine Senate refused to do. The reason for the amendment to said section 206 made by the Court can only be found in an effort to handicap the Executive Department of the Government in the due enforcement of the laws of the Philippine Islands and the administration of justice. There is just as much reason for holding that the suspension or removal of a justice of the peace must receive the confirmation of the Senate as there is for holding that his transfer from one municipality to another must receive the approval of the Senate. The removal or suspension of a justice of the peace is a more severe penalty imposed upon him for incapacity, immorality or dishonesty than his transfer from one municipality to another when the public interest requires it.

The result of this decision, if the Executive Department of the Government is to maintain its self-respect, will be that hereafter justices of the peace will be removed and not transferred when public interest requires it. Politics and corrupt political leaders have ruined many good men who might be of great value to the public in other localities and under different surroundings.

It is stated that said section 206 does not provide that the transfer of a justice of the peace from one municipality to another may be made by the Governor-General. If that statement has any merit at all as an argument, it must mean that the Governor-General cannot transfer a justice of the peace and it must lead to the conclusion that the order of transfer in question is illegal for lack of authority. If lack of authority is the reason for its illegality, then the argument that the order must be confirmed by the Senate is hardly necessary.

I am not one of those who believe that the office of a justice of the peace or that of any other judicial officer is so high or sacred that it cannot be touched when by practices of immorality, political intrigue, dishonesty, disregard for the law, lewdness, and deviation from probity and integrity, renders a continuance of his services repugnant to public interest and the highest interests of the state.

The courts have no legislative powers. In the interpretation and construction of statutes their sole function is to determine, and, within the constitutional limits of the legislative power, to give effect to the intention of the legislature. The courts cannot read into a statute something which

is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words of a statute, is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the legislature, and it is the province of the courts to construe, not to make the laws.

Every statute is understo ' to contain, by implication, if not by express terms, all such provisions as may be necessary to effectuate the rights, powers, privileges or jurisdiction which it grants, and also such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.

When a statute confers certain powers upon the executive department of the government, the courts will give weight to the contemporaneous construction placed upon such a statute by the executive department, whose duty it is to enforce it. Courts will and should respect the contemporaneous construction placed upon a statute by the executive department of the government, whose duty it is to enforce it.

In a government of separate and independent departments—executive, legislative and judicial—with separate and distinct functions, one department will not attempt to interfere with the performance of the executive duties of another. To permit such an interference would destroy the independence of the separate departments and would make one subject to the control of the others. For the judiciary to interfere with the executive department in the enforcement of a plain provision of the statute, would in effect destroy the independence of that department and would make it subject to the ultimate control of the judicial department. Such a conclusion or condition was never contemplated by the organizers of the government.

The courts should proceed with the greatest caution in the interpretation of statutes conferring express, clear and unambiguous authority upon the executive department of the government. The courts should never declare a statute void unless its invalidity is beyond reasonable doubt. In the present case the legislative department of the government has refused to give to the statute in question the meaning which the majority opinion seeks to give it.

In my opinion the petition should be denied and the Executive Department of the Government should be permitted to enforce the plain letter and spirit of the law without let or hindrance by the judiciary. The petitioner has shown himself unworthy to occupy his former position.

Street, J., *dissenting*:

It is displeasing to have to disturb the serene and naive confidence pervading the lecture with which we are here favored, but I am compelled to say that, in my humble opinion, no more notable perversion of an express provision of law has ever received the seal of approval from this court. The statute declares in most explicit terms that "in case the public interest requires it, a justice of the peace of one municipality may be transferred to another" (Admin. Code, Sec. 206). In the nature of things the act of transferring a justice of the peace is an executive act which must pertain, in the absence of express words to the contrary, to the executive branch of the Government, at the head of which is the Governor-General. There is nothing in the provision quoted which indicates that the Philippine Senate shall have anything to do with making the transfer.

Nevertheless, in the opinion before us, the court asserts that the provision above quoted is to be read as if the words "with the advice and consent of the Senate" had been made an integral part thereof. I submit that there is absolutely no legal justification for this eccentric deviation from the ordinary canons of interpretation. Much has been said in the past by this court, in opinions written mostly by the author of the court's opinion in this case, about the constitutional importance of the three-fold division of the powers of government, the idea being that one department should not participate in th› functions of another except as expressly p o-vided by law. The transfe. of the justice of the peace being in its nature an executive act pertains *prima facie* to the executive branch of the Government, and in order to justify the intrusion of a coordinate department into the exercise of that function, the court should be able to point to some specific provision to this effect. The statute contains no such provision, and in the court's opinion it is even admitted that when the provision authorizing the transfer of justices of the peace was added to section 206 of the Administrative Code, the Legislature refused to admit an amendment to the bill to the effect that the transfer should be effected "with the advice and consent of the Senate." For this court, in the face of these consideration, to insert the same words into the section by judicial interpretation is entirely inadmissible.

In section 229 of the Administrative Code the Governor General is given the unqualified power to remove any justice of the peace from office, and the opinion admits that the Senate does not participate in that function. There is no more reason why the Senate should participate in the act of transfer. The conclusion to which the court arrives in this case seems to be derive from the erroneous notion that the transfer of a justice of the peace from one municipality to another can only be effected by removal and reappointment, but the Legislature has not prescribed this round-about procedure and the words of the statute ought to be taken for what they way.

The petition should be denied.

Justice Villamor also wrote a separate dissenting opinion.

NEGOTIABLE INSTRUMENTS—LIABILITY OF MAKER AFTER TRANSFER OF NOTE.—*Government of the Philippine Islands vs. Clotilde Andrada and Dalmacio Costas*, G. R. No. 28193, January 27, 1928.—*Facts*: The defendant Dalmacio Costas executed a promisory note for the sum of ₱10,000 to the plaintiff and to secure the payment of which he made a mortgage on certain real property. Before the maturity of the note Costas sold the mortgaged property to Clotilde Andrada who agreed to pay and release the mortgage. On failure of Andrada to pay the note when it became due, the plaintiff brought an action for the forclosure of the mortgage against Costas and Andrada. The lower court rendered judgment absolving Costas from all liability and rendered judgment against Andrada for ₱10,541.44. The plaintiff moved the court to have the amount of the judgment corrected so as to read ₱10,714.45 "and to make Dalmacio Costas personally responsible for the payment of whatever amount remained unpaid in case the proceeds of the sale of the land mortgage were not sufficient to pay off the sum of ₱10,714.45." The lower court modified the judgment as to the amount but denied the prayer as to Dalmacio Costas. *Held*: "The original debt was that of Dalmacio Costas, and for the payment of which he was primarily liable. The fact that even with the

consent of the plaintiff he conveyed the property to Clotilde Andrada who assumed and agreed to pay the note, would not in any manner discharge or release Dalmacio Costas form the payment of the note. The fact that the land was sold and conveyed with plaintiff's knowledge and consent would not operate as a release, neither would the fact that after the sale Clotilde Andrada made certain interest payments to the plaintiff, within itself and standing alone, operate as a release. The debt in question being the debt of Dalmacio Costas for the payment of which he was primarily liable, it follows that the plaintiff is entitled to the defficiency judgment against him which it now claims." (In Banc, per Johns, J.)—*Briefed by E. Arévalo.*

HOMICIDE—PRESENCE OF NUMEROUS WOUNDS NOT NECESSARILY ENSAÑAMIENTO.—*P. P. I. v. Moro Rajak*, G. R. No. 28242, Jan. 17, 1928. *Facts*: Defendant was charged with and convicted of the crime of homicide, and was sentenced to 12 years and 1 day of *reclusion temporal*, to indemnify the heirs of the deceased in the sum of ₱1,000, and to pay the costs. *Held*: "By reason of the fact that so many grave wounds were inflicted upon the deceased, the court below held that the defendant had 'deliberately augmented the wrong done by causing other wrongs not necessary to the commission of the crime' and that therefore the aggravating circumstance of *ensañamiento* might be taken into consideration. In this the Court undoubtedly erred. The fact that there were many wounds than necessary for causing the death of the deceased does not necessarily signify that there was a deliberate intent on the part of the defendant to increase the suffering of the victim and there is nothing in the record to show that such was the case. Neither we do think that the aggravating circumstance of treachery (alevosía) existed; there is no direct evidence that the defendant in committing the crime employed 'means, methods, or forms in the execution thereof directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make' (Par. 2, Article 10, Penal Code). The mere fact that the defendant was lying in ambush for the deceased is not in itself sufficient evidence of treachery. But it cannot be disputed that the aggravating circumstance of nocturnity was present, and inasmuch as it appears that the defendant and the deceased were brothers-in-law, the aggravating circumstance defined in paragraph 1 of Article 10 of the Penal Code also existed. With these two aggravating circumstances, the penalty prescribed by the Penal Code for homicide might therefore be imposed in its maximum degree, but as under section 106 of the Administrative Code of Mindanao and Sulu, the trial courts there are vested with certain discretionary powers to reduce penalties and as in this case there does not appear that there has been any abuse of such discretion, we shall not increase the penalty imposed by the court below." Judgment affirmed. (In Banc, per Ostrand, J.)—*Briefed by J. S. Nava.*

Bonifacio Nicolas v. Severino Alberto, G. R. No. 28275, Jan. 10, 1928. *Facts*: "This is an action of *quo warranto* originally brought in this Court (Supreme Court Reporter) to determine the respective rights of the plaintiff and the defendant to the office of Justice of the ePace of Angat, Bulacan. The question at issue is the legal right of the Governor-General to transfer a justice of the peace of one municipality to another municipality, without the advice and consent of the Philippine Senate." The

stipulated facts show that the plaintiff and the defendant were justices of the peace of Angat and San Jose del Monte, Bulacan, respectively, under due appointments by the Governor-General with the advice and consent of the Philippine Senate, both having qualified shortly after their respective appointments. The plaintiff held his position as justice of the peace of Angat up to August 18, 1927, when he was forced to surrender possession of the office to the defendant, by virtue of an order from the Acting Governor-General. The defendant, by an order of equal date, was transferred to Angat, Since then, he has acted as justice of the peace of the latter municipality. It also appears that on April 1, 1927, the municipal president of Angat, Bulacan, filed an administrative complaint against the plaintiff, as a result of which the latter was investigated by the Judge of First Instance of Bulacan. The complaint was dismissed "with a public reprimand so that the justice of the peace might 'avoid hereafter giving cause for suspicion regarding partisanship adn favoring and stated political party in Angat." The municipal president and about 300 sympathizers appealed from this decision to the Governor-General, whose Secretary indorsed the papers to the Secretary of Justice, expressing the opinion that it would be advisable to trnasfer the plaintiff to some other municipality when opportunity arises. "Then on July 2, 1927, the Acting Governor-General, without the advice and consent of the Philippine Senate, and purporting to act 'Pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice,' ordered the transfer of Bonifacio Nicolas from Angat to San Jose del Monte. As of equal date, the Acting Governor-General, likewise without the confirmation of the Philippine Senate, transferred the defendant from San Jose del Monte to Angat." Plaintiff refused to give up his position as Justice of the Peace of Angat, until peremptorily ordered to do so by the Judge of First Instance of Bulacan. The Governor-General has denied the plaintiff's petitionos for reconsideration. The Supreme Court made the following rulings:

1. *Public Officers; Justices of the Peace; Transfers of Justices of the Peace*:—The justice of the peace is appointed to a specific municipality. An appointment of a justice of the peace is made by the Governor-General, with the advice and consent of the Philippine Senate.

2. Id.; Id.; Id.;—Justices of the peace serve during good behavior. A removal of the justice of the peace is made by the Governor-General, without the advice and consent of the Philippine Senate.

3. Id.; Id.; Id.;—The proviso to section 206 of the Administrative Code providing "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another" is silent, as to the office or entity which may make the transfer. The only possible legal inference permissible without violating the constituiton, is that the justice of the peace may be transferred by the exercise of the appointing power which consists of the Governor-General acting in conjunction with the Philippine Senate.

4. Id.; Id.; Id.;—A transfer of a justice of the peace outside of the municipality to which he was appointed is, in legal effect,

a combined removal and appointment. The removal does not need the consent of the Senate. The appointment does need consent.

5. Id.; Id.; Id.;—In case the public interest requires it, a justice of the peace of one municipality may be transferred to another only by the Gove nor-General, with the advice and consent of the Philippine Senate.

6. *Constitutional Law; Division of Powers; Independence of Legislature.*—The Court has heretofore protected any of the three powers from the encroachment of one of the others. The same principle is now carried forward to protect a branch of the Legislature from an absorption of its power by the Chief Executive.

7. *Id.; Id.; Independence of Judiciary.*—A justice of the peace is a member of the judiciary. The humble occupant of the office of justice of the peace in the most remote and insignificant municipality is entitled to the same measure of respect as any member of the Supreme Court.

Defendant is ousted from the office of justice of the peace of Angat, Bulacan, and plaintiff placed in possession of the same.—(In Banc, per Malcolm, J.)

JOHNSON, J., dissenting:

Under Section 206 of the Administrative Code, a justice of the peace may be transferred from one municipality to another, when the public interest requires it. The majority opinion has in effect amended this section by providing that the said transfer, even when required by the public interest, should be made with the advice and consent of the Philippine Senate. "The reason for the amendment to said section 206 made by the Court can only be found in an effort to handicap the Executive Department of the Government in the due enforcement of the laws of the Philippine Islands and the administration of justice. There is just as much reason for holding that the suspension or removal of a justice of the peace must receive the confirmation of the Senate as there is for holding that his transfer from one municipality to another must receive the approval of the Senate. The removal or suspension of a justice of the peace is a more severe penalty imposed upon him for incapacity, immorality or dishonesty than his transfer from one municipality to another when the public interest requires it. The result of this decision, if the Executive Department of the Government is to maintain its self-respect, will be that hereafter justices of the peace will be removed and not transferred when public interest requires it. * * * It is stated that said section 206 does not provide that the transfer of a justice of the peace from one municipality to another may be made by the Governor-General. If that statement has any merit at all as an argument, it must mean that the Governor-General cannot transfer a justice of the peace and it must lead to the conclusion that the order of transfer in question is illegal for lack of authority. If lack of authority is the reason for its illegality, then the argument that he order must be confirmed by the Senate is hardly necessary. * * * The courts have no legislative powers. * * * The courts cannot read

into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words of a statute, is to alter the statute, to legislate and not to interpret. * * * For the judiciary to interfere with the Executive Department in the enforcement of a plain provision of the statute, would in effect destroy the independence of that department and would make it subject to the ultimate control of the judicial department."

STREET, J., dissenting:

"The statute declares in most explicit terms that 'in case the public interest requires it, a justice of the peace of one municipality may be transferred to another' (Administrative Code, Section 206). In the nature of things the act of transferring a justice of the peace is an executive act which must pertain, in the absence of express words to the contrary, to the executive branch of the Government, at the head of which is the Governor-General. There is nothing in the provision quoted which indicates that the Philippine Senate shall have anything to do with making the transfer."

VILLAMOR, J., dissenting:

The Legislature has deliberately refused to approve the requisite of approval of the Philippine Senate in case of a transfer of a justice of the peace from one municipality to another when the public interest requires it. "As it is seen, the decision of the majority adds to the law the requisite of confirmation of the Senate, a requisite which the Legislature had deliberately omitted. I believe it unnecessary to adduce arguments to demonstrate that courts should not exercise legislative functions."—*Briefed by J. S. Nava.*