The Constitutionality of the Supreme Court's Sitting in Divisions as Authorized by Section 138 of the Revised Administrative Code of 1917

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INTRODUCTION

The present Supreme Court of the Philippine Islands, as it is now vitalized with the genius of Anglo-Saxon judicature, may be said to be a rebirth of the old Spanish Supreme Court of Manila in accordance with General Order No. 20. Said General Order was issued under the general legislative power assumed by the Military Governor and was the only legal spring from which the Supreme Court drew out its existence up to June 11, 1901 when Act No. 136 was passed providing for the organization of courts in the Philippine Islands including the Supreme Court.

On July 1, 1902, the Philippine Bill was approved, section 9 of which reads in part:

> "That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the government of said Islands, subject to the power of said government to change the practice and method of procedure."

This provision of the Philippine Bill of 1902 was substantially adopted by the Philippine Autonomy Act of August 29, 1916, section 36 of which provides in part:

> "That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law."

In reliance of the above federal statutes the Philippine Legislature passed Act No. 2711, popularly known as the Revised Administrative Code of 1917, section 138 of which is as follows:

> "Sec. 138. *Sessions of court in banc and in divisions.*—The Supreme Court shall, as a body, sit in banc,

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but it may sit in divisions to transact business for which four judges constitute a quorum, and two divisions may sit at the same time. If the Chief Justice is present, whether in banc or in division, he shall preside. In his absence, that one of the judges attending in banc or in the division shall preside who holds the senior commission.

Six of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum for the transaction of any business involving the admiralty jurisdiction of the court, or for the final disposition of a civil case in which the amount in controversy exceeds ten thousand pesos or a criminal case in which the judgment of the lower court imposed death, or imprisonment for more than ten years, or a fine of more than ten thousand pesos, and the concurrence of five judges shall be necessary for the pronouncement of a judgment, but when there is a vacancy in said court five judges shall constitute such quorum, and the concurrence of four shall suffice for the pronouncement of the judgment. In all other cases the presence of four judges shall be sufficient to form a quorum, and the concurrence of three judges for the pronouncement of a judgment.

In the absence of a quorum the court shall stand *ipso facto* adjourned until such time as the requisite number shall be present, and a memorandum showing this fact shall be inserted by the clerk in the minutes of the court."

Since the addition of the above section into the Revised Administrative Code of 1917, a serious doubt has run through the legal profession of the Philippine Islands about its constitutionality, it being claimed in some quarters that said section is violative of the organic provisions relative to the supreme court. As a matter of fact, two test cases, one directly raising the point at issue and the other indirectly, but fundamentally, involving it have already been squarely presented before the supreme court itself for resolution. (U. S. v. Limsiongco, 41 Phil. (1920) 94; Buenviaje v. Director of Lands, 49 Phil. (1922) 939). In both of these cases, by equally short decisions, the constitutionality of the section in question was upheld.

It is now the purpose of this paper to supplement, should the writer be permitted, by way of further humble elucidation,

the reasons already contained in the two above mentioned decisions.

In so far as it bears upon the line of reasoning and the scope of this paper it is already a fixed and universally accepted fundamental proposition in Philippine constitutional jurisprudence that, the jurisdiction of the supreme court is unreacheable by the Philippine Legislature for all purposes tending to diminish it. That the Organic Laws guaranty the jurisdictional integrity of the Supreme Court by providing that whatever powers that court had, whatever jurisdiction that court exercised at the date of their approval were, by such approval, incorporated into the body of fundamental laws and insured against destruction or abridgment except through a change in the fundamental laws themselves. To abolish the court, to impair its jurisdiction, to diminish its authority, are beyond legislative power because that jurisdiction and authority form part of a body of laws which, upon wise grounds, have been made immutable by any mere act of the Philippine Legislature. (In re Guariña (1913) 24 Phil. 37; Barrameda v. Moir (1913) 25 Phil. 44.)

But while it is true that the Philippine Legislature cannot diminish the jurisdiction of the Supreme Court, it is equally true that said legislature may add to such jurisdiction or change the practice and method of procedure adopted by the court. (Ibid; Sec. 9 Phil. Bill; U. S. v. Limsiongco, Supra; Buenviaje v. Director of Lands, Supra.)

In his treatment of the subject matter of this paper it is the desire of the writer to pursue three distinct avenues; namely, (1) mere reasoning (2) historical fact and (3) judicial authorities.

THE QUESTION VIEWED IN THE ABSTRACT

The Organic Laws of the Philippine Islands, like any other constitution, does not deal in detail about the functions and organic structure of the Philippine Government. Indeed, much is left upon the competence of the Philippine Legislature to breathe the breath of life and vitality into the many provisions of the organic laws before they can drain and form the warp and woof of the whole governmental system. With respect to the Supreme Court, like what is done in other constitutions, it was deemed wise that the Organic Acts should merely guaranty its jurisdiction, that being inherently a direct and palpable exercise of sovereignty. Much was also left upon the competence of the Philippine Legislature to provide, by means of supple-

mentary and detailed laws for the organization and methods of procedure of said court. (U. S. v. Limsiongco, Supra.) For as said by the supreme court of the United States, in speaking of the Federal Supreme Court and in answer to the contention that the moment a supreme court is formed, it is to exercise all the judicial power vested in it by the constitution by its own authority regardless whether the legislature has prescribed methods of procedure or not, "All courts of the United States must receive not merely their organization as to the number of judges of which they are to consist, but all their authority as to the manner of their proceeding, from the legislature only." Continuing, it further said: "If, therefore, the court is the organ of the constitution and the law, not of the constitution only, in respect to the manner of its proceeding, we must receive our direction from the legislature in this particular and have no right to constitute ourselves *oficina brevium.*" (Chisolm v. Georgia, 2 Dall 419; L. Ed. 440.) Knowing as we do the relatively more stringent protection with which the United States Supreme Court is afforded by the constitution against congressional incursions, the same statement could be applied with more reasons to the Philippine Supreme Court.

Thus section 9 of the Philippine Bill expressly authorizes the Philippine Legislature "to change the practice and method of procedure" in the Supreme Court. And in passing section 138 of the Administrative Code the Legislature undoubtedly labored under the legitimate impression that the power "to change the practice and method of procedure" embraces the capacity of making provision for the facilitation of suits and the dispatch of business. For the section in question was truly intended to no more. (15 C. J. 989.) Experience has proved that to some degree it has enabled the supreme court to dispose of more cases than what it would have been able to do were it to sit in banc all of the time and for all purposes. The truth is, it was passed during such a time when, owing to the liberal and facile method provided for appeals, both the energy and the time of the Supreme Court were on the verge of serious embarrassment caused by the pendency of increasingly numerous appealed cases. The law was passed as an expedient, without recurring to the burdensome procedure of amending the fundamental law itself with respect to the Supreme Court's appellate jurisdiction. Because truly, a provision for the provision of the court's business is not connected with jurisdiction at all. As a matter of fact upon a textual examination of Act 136

where most of the confirmed jurisdiction of the Supreme Court is derived, we find that the provision about the court's sitting in banc is found among that group of sections providing for sessions and terms of courts, place of hearing, transfering of hearings, rendering and writing of decisions and other matters regarding rules and procedures; while the substantive jurisdiction of the supreme court, to which the organic laws have exclusively spread their constitutional safeguard, is defined by sections 16, 18, 18 and 19 of said act.

A court is a legal entity. Its judges or some of them form by their presence an essential constituent element of its being—so essential, indeed, that they are even called the court itself. (Michigan Cent. R. C. v. R. Co., 3 Ind. 239; McClure v. McClurg, 43 Mo. 173.) According to Bacon it is "an incorporeal being, which requires for its existence the presence of the judges or a competent number of them." But as to what is the number of judges that should constitute a court or what is the competent portion of that number to validly hold a court, all depends upon the legislature. Nowhere among the Philippine Organic Acts do we find a provision to that effect. It is very safe to allege, therefore, that the United States Congress has left it to the Philippine Legislature to increase or diminish the number of justices of the supreme court, unless it be claimed that this course is violative of the only fundamental constitutional restriction to which we have already adverted to in the beginning; i. e., the legislature may add to but cannot diminish the jurisdiction of the Supreme Court. But it requires no stretch of the imagination to see that jurisdiction, which has been defined as the power and authority to decide a case, (Herrera v. Barreto, 25 Phil. 245), is not dependent upon the number of judges that will be declared to compose a court in the absence of organic or statutory imposition. A supreme court of eight justices is no more a supreme court than one of four. The wholeness of the legal entity that cluster together the judges into one institution known as the supreme court is not destroyed in one because there are only four judges comprised while in the other there are eight. In both cases the entity known as the supreme court is the same. The four judges who compose the supreme court in one wield the same power and authority (not less) than the supreme court composed of eight; because that power and authority emanate from the same sources and are conferred upon the court as a body or an entity—not upon the judges individually and separately.

If, therefore, jurisdiction is not dependent upon the number of judges that will be declared to compose a court—the two being absolutely distinct and foreign to one another—it follows that by diminishing or increasing the number of justices of the supreme court the Philippine Legislature does not side step the fundamental inhibition set by the organic laws relative to the Supreme Court; and there being no side stepping of its constitutional inclosure it is within the competence of the legislature to increase or diminish the number of justices of said court under the general legislative power of the former. (U. S. v. Bull, 15 Phil. 7.)

And if the Philippine Legislature has power to increase or diminish the number of justices of the supreme court certainly it has the power *a priori* to ordain that any four judges could validly hold a court and perform judicial business. It has the right to construe that as a necessary consequence of its power to regulate the number of the justices it had the power also to say that four of them might dispose of a case sitting as the supreme court in a division. But this is all what the Philippine Legislature has done in passing section 138 of the Revised Administrative Code and in providing, "The supreme court shall, as a body, sit in banc, but it may sit in divisions to transact business for which *four judges constitute a quorum,* and two divisions may sit at the same time."

In this connection it is desired to say that there could be no difference between the terms *"quorum"* and *"court"*, because each term implies a body capable of performing function for the whole not otherwise reserved. (Floyd v. Quinn (24 R. I. 147; 52 Atl. 880.)

Perhaps, in order to clench this particular argument, it would still be necessary to give some few moments to the arch contention of those who have misgivings about the constitutionality of the Supreme Court's sitting in division. Such contention is to the effect that by such a division virtually two supreme courts have been created, each with an independent existence and jurisdiction. Of course, should this belief be tenable in its logic the conclusion is really clear and inescapable that section 138 of the Administrative Code is a trespass on the constitutional limits imposed upon the Philippine Legislature.

But the idea, that by means of the division two supreme courts are created, is more apparent than real and more the product of short vision than a stretched one. For the court remains as a unit in spite of the fact that it sits in divisions.

(U. S. v. Limsiongco, supra, citing 15 C. J: 989). It was not two supreme courts which section 138 of the Administrative Code contemplated, but only one court dispatching different classes of cases by its different members at the same time. Should there be doubt about the legislative intent in this regard it is only necessary to advert to the happy wording of the law itself which says, "but it *may* sit in divisions." It is seen thus that the court's sitting in division is merely permissive and in fact, the writer dares say, merely declaratory of what is every court's inherent power to delegate a judicial business to any portion of the number of its judges in the absence of a legislative declaration as to what must constitute a quorum. (Gray v. Bastedo (1884) 46 N. J. Law 452.)

In no way, therefore, is the institutional wholeness and integrity of the supreme court, nor is its power and authority affected by the fact of its sitting in division; for whatever decision any division arrives at is taken and adopted by the court itself as that of the whole court.

We quote from the case of Brown v. Campbell (43 Pac. 1895) the following: "The assignment of causes to different departments does not take place until after the court has acquired jurisdiction of the cause, and is made in order to expedite the business of the court, by apportioning them to the several judges for trial and judgment. The jurisdiction over a cause after it has been assigned by the presiding judge to one of the other justices for trial remains in the same court, and neither the judge to whom it has been assigned, nor the department over which he presides, has any jurisdiction over the cause distinct from that of the court in which the action is pending. The entire procedure from the commencement of the action to the execution of judgment is in one court. *There is no division, much less diminution of jurisdiction.* When, therefore, a suit is commenced in that court upon a cause of action which is then pending before it in another suit, or which has already been carried into judgment, the procedure to be observed is the same as if the two actions were in a court with but a single judge before whom all causes therein were to be tried."

This leads us now into the inquiry whether the organic laws have set a definite number of judges of the supreme court to constitute a quorum. The importance of this consideration lies in the fact that should a quorum have been fixed by the fundamental laws any act of the Philippine Legislature which divides the supreme court into a division of judges whose

number is less than the quorum fixed by the organic laws is entirely void. And as it has already been alluded to there could be no difference between a valid "court" and a valid "quorum" since each is capable of doing the functions of the whole not otherwise expressly reserved or provided. The consideration is further important in view of the claims of those who doubt the constitutionality of the Supreme Court's sitting in division that an implied quorum was fixed by the organic laws when they ratified and confirmed all the jurisdiction that the supreme court had upon their passage, especially those contained in Act 136 where a prior provision could be found that six judges of the supreme court must constitute a quorum and that four of them concurring will be necessary to promulgate a decision. (Buenviaje v. Director of Lands, Supra.) It should be noted that section one hundred thirty-eight of the Administrative Code, in providing for divisions, merely says that *four* judges can constitute a quorum in division and the concurrence of *three* of them will be necessary to promulgate a decision.

A review of all the Congressional Acts relative to the Supreme Court reveals an utter silence about its quorum. As intimated, therefore, the question arises whether the quorum originally fixed by Act 136 has been incorporated by implication into the organic laws such that, in providing that the Supreme Court may sit in divisions of four judges each, the concurrence of three of them being necessary to promulgate a decision, the Philippine Legislature overstepped its constitutional limits. Bearing in mind again that the only express restriction placed by the organic laws upon the Philippine Legislature relative to the Supreme Court is against the diminution of the jurisdiction of the latter, an affirmative answer could be given to this question only when it can be held that the quorum and the necessary number of judges to promulgate a decision originally fixed by Act 136 are within the reaches and the protection afforded by any legal implication flowing from the restriction of the fundamental laws. This is our immediate point of inquiry presently.

In order to be reasonably embraced within the halo of the constitutional inhibition, the provision in question must first of all relate to jurisdiction. Does it? It has been demonstrated at the earlier part of this chapter that jurisdiction is not dependent, neither is it related in any manner to the number of judges constituting a court or to the number of judges participating in its consideration in the absence of constitutional expression or at least of any legislative declaration. The same reasoning

finds place in this particular instance. The determination of the number of judges to constitute a quorum is an incident of the legislative power to increase or diminish the justices of the Supreme Court, the quorum necessarily fluctuating with the number to which the justices are finally increased or diminished. For it is the height of absurdity to maintain that the quorum of six as provided in Act 126, under the assumption that it has been elevated to an organic character by the jurisdictional protection of the fundamental laws, is unassailable by legislative enactments and at the same time concede legislative competence to increase or diminish the number of the justices. Thus, should it be claimed, for example, that the quorum should still be that of six even though the legislature has reduced the total number of justices to five, under a power that is undoubtedly conceded by all? Granting one would be rejecting the other; and it being granted that the Philippine Legislature has power to increase or diminish the number of justices of the supreme court, it stands to reason that it has also the power always to vary its quorum which is principally dependent upon the ultimate number fixed. This is a square abdication of the theory that the quorum is related to jurisdiction.

It is now seen that a quorum does not relate to jurisdiction. It is also seen that, this being so, the quorum originally fixed by Act 136 was not incorporated into the organic laws by implication for the sole reason that the only constitutional safeguard there is relative to the Supreme Court is about its jurisdiction. Keeping all these things in mind, the whole argument against the constitutionality of the Supreme Court's sitting in division may be finally stated into this: That the court must be indivisible and that all of the judges must be present to hear and decide all cases at a given time and place. Since this is quite impossible in practice all the time, however, for some justices must perforce either be sick or absent, a concession must be granted that the court may validly sit if it can command a quorum. But there is nothing in the organic laws, either expressly or by implication, that determines the quorum. It is left, therefore, upon the Philippine Legislature to say, what that quorum is, and it has done so by providing that justices of four in division may form a quorum and act as a supreme court. Is there other limitation upon the Philippine Legislature in this regard?

The supreme court is at present composed of nine justices. Independently of organic considerations it may be asked whe-

ther the Philippine Legislature has power to provide for a quorum of four justices (in division) which is less than the majority of the nine members of the court. In other words, even in the absence of a constitutional mandate, has the Philippine Legislature the power to go against the parliamentary principle, that a quorum must at least be a majority, in fixing the quorum of the supreme court?

In the case of Gray v. Bastedo (1884), 46 N. J. Law, 453) the question was presented whether independently of any constitutional provision or statute a court in the exercise of its ordinary jurisdiction can perform its legitimate function through a single judge (as a division) by the designation of the court itself. It was held that: "The rule undoubtedly is as to all judicial bodies exercising a special and limited jurisdiction that all must act in the cause, matter or thing committed to the persons who compose the body until their powers be fully executed..... And it seems to be a widely accepted if not a universal rule, in all deliberative bodies composed of definite numbers, that a majority is necessary to the transactions of business. But the rule applicable to special tribunals does not apply to courts of general jurisdiction." And in the absence of legal requirements "nor am I cognizant" according to the writer of the opinion, "of any general rule or authority requiring the majority of the judges of such a court to be present at its sessions and participating in the performance of its functions at the pain of death, temporary or permanent to it as a court, or without which the assumptions of a lesser number to perform its functions are mere judicial nullities. A position on this question not found on express law or controlling custom which admits the power of a less number than the whole court must concede a like power to *any one judge*, for between the whole number and the least there is none designated as a limit. The number which must be regarded as sufficient, when not otherwise prescribed, is that which necessity, convenience or the determination of the judges for the time being shall deem to be so. From provisions in law for a number of judges of a court, a policy is apparent requiring as far as possible that the judgment of the many shall be had. But the question of power to preserve organization is beyond this and the court should not fail if sickness or disqualification to act, or absence from neglect, leave *but one* to perform the public duty unless legislation has annexed this infirmity to its existence."

If it can be said that the power inheres in a court composed of more than one judge to delegate the performance of a judicial business to any *one* of their number, in the absence of constitutional or statutory requirements, *a fortiori* the legislature has the undeniable power to declare that a quorum could be less than the majority of the members constituting the court.

It is interesting to note in this connection that in the House of Lords, the Supreme Court of the realm of England, a small minority sits in deciding appeals. While there is no written constitution governing that body so also there is no organic provision governing the quorum of the Philippine Supreme Court.

THE QUESTION VIEWED HISTORICALLY

The writer justifies the use of the historical method in the treatment of the subject-matter of this paper with the idea that the Supreme Court, as an age-long state institution, has a history of its own, on the tract of which have been written inveterate usages and practices which rise out as ultimate bulwarks of recourse every time its judicial constitution is brought to task by the vissicitudes of ensuing times. It is to be noted here that the Supreme Court has two legal springs, the Spanish and the English-American, from which it draws out some of those inherent attributes that have been embedded into its very frame work independently of, but supplemental to, the provisions of the organic laws. As to what is the relative force of those attributes that emanate from each source, however, the Supreme Court itself has said: "It cannot be doubted, therefore, that any incident of the former (Spanish) system which conflicts with the essential principles and settled doctrines on which the new (English-American) system rests, must be held to be abrogated by the law organizing the new system". (Alzua v. Johnson, 21 Phil. 343.)

Unless it can be said, therefore, that section 138 of the Administrative Code has effected no inherent, essential change in the judicial constitution that the supreme court has inherited from its Spanish predecessor (insofar as enforceable) or from its English-American prototype, any doubt regarding said section 136 may really generate legitimate apprehension as to its legality. But conversely, should section 138 be in fact confirmatory to what had been the long practice on the premises among common law countries, more faith should be given to its validity.

It is to be remembered, nevertheless, at the outset that when we are examining a given positive law to determine whether it has run afoul to any deep seated fundamental principle or not we use a language according to the subject matter. In so doing such terms as "organic", "inherent", "essential" and the like, are not meant to import a physical, moral or mathematical necessity, but rather a scientific fitness and congruity, having regard to inveterate usage, historical development and the nature of legal things. And if we deal with the matter in this sense, the conclusion is inevitable that many constitutional courts of the common law, and for that matter, including the old Audiencia de Manila, are separated into divisions and never has it been successfully contended that under such arrangement there is diminution of jurisdiction or going out of the constitutional boundaries. The proof of this is judicial history itself.

The Philippine Supreme Court has a history that roots itself in the gray beginning of Spanish regime. On May 5, 1582 the Audiencia Territorial de Manila was first organized consisting of one Chief Justice, who was also the Governor-General, three associate justices, and one Attorney General. This Audiencia had only seven years period of existence for after that space of time it was made to fade out of the judicial scene to be revived, however, on May 25, 1596 under another name of Audiencia y Chancilleria Real de Manila. At this revival the Audiencia was enriched by the addition of one associate justice. During the interegnum of its dissolution, the void that it left in the organic wholeness of the government was supplanted by the council of 400 men under the chairmanship still of the Governor-General. Such a council, however, owing to its size, could not be anything else than productive of chaos and inefficiency, defects which the King of Spain was not slow to see and which hastened the termination of this judicial experimentation in preference again for the Audiencia.

From May 25, 1596 to May 23, 1879 a series of four royal cedulas were issued by the Spanish Government all dealing with the reorganization of the Audiencia. The most notable of these cedulas was that of June 7, 1815 changing the personnel of the Audiencia by making it to consist of one Chief Justice, one regent, five associate justices, two attorneys general, one assistant to the General Chanchellor, two assistant attorneys general, two reporters, and other employees including minor officials. The royal cedula of May 23, 1879 was also notable in that the

Audiencia de Manila was placed on a similar footing as the supreme court of Spain, Cuba and Porto Rico.

On February 26, 1886 the Audiencia Territorial de Cebu was organized and conferred with the jurisdiction over civil and criminal cases coming from the courts of first instance of the provinces in the Visayas, Mindanao and Sulu. This creation of a second Audiencia naturally diminished the territorial extent for the exercise of the jurisdiction of the Audiencia de Manila, with the result that it rendered the reorganization of the latter court imperative. Thus another modification came into the structure of the court by making its personnel to compose of one chief justice, two presidents of chambers, eight associate justices, one attorney general, three attorneys, one secretary for the Audiencia and a secretary for each of the two chambers. Its jurisdiction was limited to Luzon and neighboring islands. When by royal decree of May 19, 1893, however, the civil jurisdiction of the Audiencia Territorial de Cebu was abolished, making it exclusively an Audiencia de lo Criminal, and when the same court was established in Vigan, the Audiencia de Manila was given appellate jurisdiction of all civil cases coming from every part of the Philippine Archipelago. Its criminal jurisdiction, however, continued to be limited to Manila and fifteen enumerated provinces adjacent thereto.

Such was the organization and the jurisdiction of the Supreme Court of Manila at the time when the American occupation took place on August 13, 1898. By a general order, the criminal jurisdiction of the Supreme Court was suspended from August 13, 1898 and its civil jurisdiction from January 30, 1899. Another general order, (No. 20) of May 29, 1899, however, reestablished the Supreme Court with the same jurisdiction as it originally possessed and charged it with the duty to administer the law recognized as continuing in force by the proclamation issued by General Merritt on August 14, 1898, except in so far they have been or might thereafter be modified by authority of the United States.

On its English-American side, we could trace no definite and positive history of our Supreme Court. But we could examine the organic make-up of the Supreme Courts of England and America and from them deduce those inherent qualities which are deemed to pervade the organization of every common law court of last resort, which inherent qualities may also be deemed to have been carried into the Philippine Islands

when the American Government established a judicial system in this country. (Alzua v. Johnson, 58 L. Ed. 142.)

Limiting our inquiry merely upon the point whether it has been an immemorial practice on the part of common law courts to sit in divisions we first start with the judicial system of England. The English Judicature Acts of November 2, 1875 created the Supreme Court of Judicature to consist of the High Court of Justice and the Court of Appeal. In the High Court of Justice there are three division: The King's Bench Division, the Chancery Division and the Probate, Divorce and Admiralty Division. In itself the High Court of Justice does not perform judicial functions for these are designated to the different divisions. In their actual performance of judicial business these divisions again sit in divisional courts. Thus the King's Bench Division is sub-divided into Divisional Courts of two or more judges, any number of such courts sitting at the same time.

The Chancery Division, which is composed of the Lord Chancellor, who is the President, and six puisne judges is also divided into three groups of two judges each. The Probate, Divorce and Admiralty Division of the High Court of Justice is the only one that does not sit in divisions. This is due to the fact that it is merely composed of a President and one puisne judge.

The Court of Appeal, which consists of the Master of the Rolls and five Lord Justices of Appeal, with the occasional assistance of the Lord Chancellor, any ex-Lord Chancellor, the Chief Justice of England and the President of the Probate, Divorce and Admiralty Division, also sits in two divisions. When present, the Master of the Rolls presides in the first division and the Lord Justice in the second.

From this brief and seemingly flying excursion into the organization of English judicial institutions it is apparent right in the first instance that the sitting in divisions is a permanent trait of the English Supreme Courts, a trait that is as old as the courts themselves. Of course, the objection might be offered that there is no written constitution governing the English courts, while in the Philippine Islands we have the organic acts. But even in spite of this general difference, there is also no written provision governing our Supreme Court's sitting in divisions. With respect to this particular point, wrapped as it is by the silence of the organic laws, the Philippine Legislature must perforce find precedent only among the Supreme Court's

prototype in the common law. And we have found that precedent surely enough.

It only remains necessary to state at this juncture that although the present arrangement of the English Supreme Courts was definitely laid down by the Judicature Acts of November 2, 1875, yet said Acts did in no way establish a novel method of organization. As a matter of fact, in keeping with the progress of the times, said acts merely made a systematic classification and restatement of the many divisions of the Supreme Courts that have been existing long before. In other words, in a certain sense, said acts were merely a reconfirmation of the immemorial practice of the court's sitting in divisions. (See generally Odgers, Common Law; Halsbury's Laws of England, under the title Courts.)

We now proceed with our historical inquiry to the different state supreme courts of the American Union. In doing this we also naturally arrive at the conclusion that the fact of sitting in divisions is deeply intertwined with the organizational fabric of those courts. Let us take three typical cases for practical examples.

The Court of Appeals of New York offers the first interesting object of study specially with respect to the principal claim of some of those who doubt the constitutionality of Section 138 of the Administrative Code, that the Supreme Court's sitting in divisions amounts to a diminution of the jurisdiction conferred upon the whole court. Perhaps no other state is more jealous about the integrity of the jurisdiction of its Supreme Court than New York itself, not barring the Philippine Islands, even. (Alexander v. Bennett, 60 N. Y. 204; Brooklyn v. New York, 25 Hun. 612; Popfinger v. Yutte, 102 N. Y. 42) 6 N. E. 259; Hutkoff v. Domerest, 103 N. Y. 380, 8 N. E. 899.) Yet in spite of this, the Supreme Court of New York, itself, has recognized the legality of its own sitting in division, as an age-long practice to which no constitutional objection could have been offered. (See the reasoning of the Court in Mussen v. Granite Works (1892), 63 Hun. 367; 18 N. Y. Supp. 267.)

In New Jersey, the law authorizing the sitting in division of its Supreme Court was passed as far back as March 24, 1845, (Pamp. L. 154). About ten years later the constitutionality of this statute was directly challenged. In the course of an opinion sustaining its legality we find the following words which are pertinent at this juncture from the historical viewpoint:

"Whatever sanction time, usage and acquiescence can give to a public statute of this description, this statute has the benefit of it." (Wood v. Fithian, 24 N. J. Law, 838.) The position taken by the Supreme Court of New Jersey in the resolution of this question is further remarkable because of the fact that the constitution of that state is no less watertight against any legislative attempt to diminish the jurisdiction of its Supreme Court than the Philippine organic laws. (See Flanigan v. Treasurer, 44 N. J. Law 118; State v. Decue, 31 N. J. Law, 302.)

From the Supreme Court of Rhode Islands we have the following statement as to the very long practice of that court to sit in divisions: "This (referring to the court's sitting in division) is no more so than it has been continously since the organization of this court, when, under Chief Justices Greene, Staples, Ames, Bradly, Brayton and Durfee, separate branches of the court have been held at the same time. The fact is that the judiciary act (dividing the court into divisions) introduced no new feature into our judicial system". Answering the contention that by such a division there is a diminution of the jurisdiction of the Supreme Court, the court said: "Admitting the defendant's proposition that no jurisdiction can be taken from the Supreme Court, it appears that it has not been done."

After this brief historical survey that has just been made both of the English and American courts of last resort on one side, with particular stress on the practice of their sitting in divisions, and the Audiencia Territorial de Manila, on the other, as the two springs of those incidental attributes that have woven themselves together into a groundwork for the present Supreme Court of the Philippine Islands, there could now be deduced some inferences and conclusions. Indeed, we would not be so bold enough as to write those inferences and conclusions to the effect that those attributes, especially the ones inherent to and flowing out of the common law sources, have the rank of organic character among the Philippine laws, even in spite of the reasoning of the United States Supreme Court in the cases of Carrington v. U. S., 208 U. S. 1, 7; 52 L. Ed. 367, 368; 28 Sup. Ct. Rep. 203 and Alzua v. Johnson, 58 L. Ed. 142. But certainly they could be a cause of much hope for holding the validity of section 138 of the Administrative Code knowing as we do that after all it is just a legislative confirmation of an immemorial and inherent practice among the common law prototypes of our Supreme Court.

THE QUESTION VIEWED FROM JUDICIAL PRECEDENTS

It should be confessed that the subject matter of this paper, as it is herein presented, is novel in its form. Of the few adjudicated cases that can be found, having analogy to the proposition which is under treatment, none has come to the writer's notice that touches the same issues involved or was decided under the same circumstances of fact as the question which presents itself in the Philippine Islands. This is due, of course to some divergence that can always be pointed out between the Philippine organic laws and the different constitutions under which those adjudicated cases have arisen. All that can be done under the circumstances, therefore, would be merely to observe the methods of reasoning which the other courts have pursued and by analogy adopt them to the peculiar circumstances under which our proposition is enshrouded.

As early as 1808 Chief Justice Marshall has already said: "As little foundation is there for the exception taken to the manner in which the circuit court was constituted. That court consists of two judges, any one of whom is capable of performing judicial duties. So this court consists of seven judges any four of whom may act. It has never been supposed that the death of three of the judges would disqualify the remaining from discharging their official duties until the vacant seats of their departed brethren should be filled. There is nothing in the peculiar phraseology of that part of the act which establishes the circuit courts that requires a different construction of the words authorizing a single judge to hold those courts from what is usually given in other cases to clauses authorizing a specified number of justices to constitute a court." (Pollard v. Dwight (1808), 4 Cranch 421, 2 L. Ed. 666.)

It has already been established herein that the Philippine Legislature has power to increase or diminish the number of justices of the Supreme Court; and that as a consequence of this power it has also the right to change the number of justices who should compose its quorum. It has also been known that the passage of section 138 of the Administrative Code was no more than an exercise of both of these powers. As to the constitutional source of these powers the Supreme Court of New York has held:

"It may be said that this court counts of eight judges, that a less number cannot constitute it; and therefore from necessity its members must sit in all cases." But, under the power given to the Legislature to provide for the organization of the court:

"The authority to organize implies a right to ordain whatever was necessary or fit in order to form a court, and give it efficient action without going counter to the constitution, which is silent on the subject of a quorum". Hence a law fixing a quorum of less than eight was adjudged to be constitutional. (Dakley v. Aspinwall (1850) N. Y. 547.)

Quite analogous to the above holding was the decision of the Supreme Court of Georgia in Welborne v. State (40 S. E. (Ga.) (1902) 857) which says: "If the business of the court is of such a character as in the judgment of the General Assembly the court should be permitted to sit in two or more divisions, there seems to be no good reason why the legislature should not provide for as many divisions as the business of the court demands and for as many divisions as judges of the Supreme Court can be obtained." (See also Bone v. State, 86 G. 108, 115, 12 S. E. 205.)

As against the claim that by its sitting in divisions the Supreme Court is practically separated into two independent judicial bodies, in absolute contravention of the organic laws, we cite the ruling of the Supreme Court of California: "Jurisdiction of causes is vested by the constitution in the court, not in any particular judge or department thereof. The constitution in fact says nothing about departments..... Whether separately or together, the judges hold but one and the same court, and the jurisdiction they exercise in any cause is that of the court, and not the individual. The division into departments is purely imaginary and for the convenience of business and of designation". (White v. San Francisco Super. Ct., 42 P. (Cal.) (1895) 580).

There is only one court in spite of the divisions because the division is the Supreme Court itself. (Barry v. Mercein, 2 How (43 U. S.) 434; U. S. v. The Little Charles (1819) 26 Fed. Cas. 982; Cunningham v. Neagle, 10 Sup. Ct. 665, 136 U. S. 56).

In the case of Foote v. Silsby, (1850) 9 Fed. Cas. 393), a writ of error was granted at chambers. The question arose whether or not a judge at chambers has the power to allow the writ when the statute provides that it should only be allowed by the *"court"* as it may deem reasonable. The court held that a judge sitting at chambers is a *"court"* in the proper and usual sense of the term and in a sense which may satisfy the words as well as the the import of the statute.

Again, in State v. Lane, (1844) 26 N. C. 434) it was there contended that all the judges are required to compose the

"court". It was held that this could not be so for the reason that if all the judges be necessary to constitute the *"court"* then all must also be necessary to give the judgment of the *"court"* as far as the import of that term itself goes.

A case which is illustrative of an instance in which a supreme court's sitting in divisions may be held unconstitutional on the ground of diminution of jurisdiction is furnished by Mussen v. Granite Works (1892) 63 Hum. 367; 18 N. Y. Supp. 267). An act of New York gave exclusive jurisdiction of all actions against the city of New York to a single division (district) of the Supreme Court. Here there is no doubt of the legislative intent to make the division concerned independent and exclusive in so far as it concerns the particular kind of actions provided. And the Supreme Court was not slow in holding the act unconstitutional, as tending to diminish the jurisdiction of the whole court. But the reasoning of the court itself is very instructive and is in fact a confirmation of the legality of its sitting in divisions or districts. The court held that the New York constitution provided for merely one Supreme Court, but that for convenience in transacting business the court could be divided into districts each with the full power of the court and of the supreme court of the State—not that of the Supreme Court of the district (Division).

In this connection it is desired to advert again to the fact that Section 138 of the Administrative Code was very fortunately worded indeed when it provided "but it may sit in divisions."

CONCLUSION AND RECOMMENDATION

As a result of the foregoing exposition, following the avenue of reason, historical fact and judicial authorities, the writer inevitably arrives at the conclusion that the Supreme Court's sitting in division, as authorized by Section 138 of the Revised Administrative Code of 1917, is constitutional. There might be better opinions to the contrary, however; and in view of the fact that the decisions of the Philippine Supreme Court in the cases of U. S. v. Limsiongco and Buenviaje v. Director of Lands have not yet assumed the full dignity of true precedents under the Philippine Law, since the questions raised therein fall under those that may yet be taken cognizance of by the Federal Supreme Court of the United States, it is recommended that a test case be elevated for final and complete determination by that august tribunal.