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Is An Intermediate Court of Appeals in the Philippines Necessary?

The disposing of individual cases is not the only function of an appellate court. The Supreme Court of the Philippine Islands, under the system established by the Jones Law, is committed with the responsibility of determining the law in this jurisdiction, and to express the principles of law that will clarify legal relations and from which the great body of the population as well as the courts will frame their future conduct. There is no other organization, except an intelligent legislature, that is looked up to for leadership in the development of law.

The leadership demanded in a supreme court requires that it has time to deliberate on cases submitted to it. Under the present pressure of appellate business, however, conference and discussion among the justices of the Supreme Court have already been given up except in a few rare instances. The opinions are most often prepared by only one justice. Unless there is a strong reason for a dissenting opinion, many of the justices do not even read the record.

There is no possibility that the number of cases brought on appeal will decrease, unless a cataclysm wipes out a great portion of the population and kills potential litigants. Litigations will multiply with the growing population and the increase in and complexity of economic enterprise. While the doctrine laid down in Barrameda vs. Moir (25 Phil. 44), which opened the Supreme Court to all appeals from all inferior courts, stands, the highest tribunal will always face a growing and increasing burden of appeals.

To relieve the Supreme Court from increasing appellate business, it has been suggested that: (1) the number of justices be increased to thirteen and a third division be added, or (2) an intermediate court of appeals be created. The Philippine Legislature chose to adopt the system of intermediate court of appeals, but the Court of Appeals Act that was passed was virtually killed by Congress by non-action. There is now a proposal coming from the Department of Justice to increase

the number of justices in the Supreme Court to thirteen and a third division be added.

The problem of increased complexity of appellate organization is even more marked in such populous states as New York, Illinois, Pennsylvania and Ohio. All these states have intermediate courts of appeals as also the smaller states like Tennessee, Georgia, Alabama and Missouri. Other states have divisional supreme courts, while states like Virginia, Missouri and Texas combine the divisional and the intermediate court systems.[1]

Intermediate courts have come to stay, and in some jurisdictions specially New York, they have been very successful. Much of the reputation of the New York judiciary is due to the successive stages in which cases are shifted through trial and appellate courts, leaving to the highest court the important cases involving the uniformity and the development of the law. Of course the presence of Judge Cardozo in the New York Appellate Court lends authority and power to its decisions, but even Judge Cardozo would have difficulty in maintaining the quality of the decisions of his court if the intermediate courts have not absorbed much of the routine cases.

The use of the intermediate court will permit an organization by which the more important cases may come to the final court of review for deliberate consideration. "We must face the issue of a more effective appellate organization as a permanent one," said Professor Dodd. "Under our system of law, courts are vested with the final construction of constitutions and statutes, and with the final determination of rules of common law. They are charged with a leadership in the law which they cannot surrender, and which they are not now organized to exercise." [2]

Professor Sunderland points out two principal defects in the intermediate court of appeals system. There is always the irritating uncertainty of jurisdiction and the enormous cost in time, effort and money in double appeals. "There is a complete lack of any sound basis," he says, "upon which the jurisdiction can be divided. There is not a single question or field of the law, and not a single case, which would not fall within the jurisdiction of an inferior appellate court in some states and of the highest court in others. And not only is there no

[1] 1929 Handbook of the Association of American Law Schools, p. 75.

[2] Speech of Professor Dodd before the Twenty-Seventh Annual Meeting of the Association of American Law Schools; 1929 Handbook, p. 88.

principle upon which a workable division of appellate business can be made, but the very lack of such a principle fosters perpetual amendments regulating appeals." [3]

The burden of double appeals must also be reckoned with. Much as the intermediate court is desirable as a means to draw away the congestion in the Supreme Court, the burden imposed on litigants as well as on courts, should there be double appeals, must also be taken into consideration. "Now it is obvious," continues Professor Sunderland, "that if the final authority of the Supreme Court is to be fully protected, an intermediate appellate court necessarily implies either a second appeal, as a possible incident in every case. This is burdensome alike to the parties and to the courts, and the mere right to apply for a second appeal produces substantially the same burden upon both court and parties as the unrestricted right to appeal." [4]

Chief Justice Hiscock, of the New York Court of Appeals, in discussing means for relieving that court, at the meeting of the New York State Bar Association in 1919 said: "During the last year, out of practically 400 contested motions submitted to the court, 215 or 216 were applications. Every application for leave to appeal takes precisely the same course as a regular appeal." [5]

Professor Sunderland would rather relieve the Supreme Court of its appellate burden by creating new divisions rather than establish intermediate courts. Attorney Amzi B. Kelly would rather have the divisional court for the Philippines also if his pet theory of a single-judge court were not accepted.[6]

Professor Sunderland points out three ways by which the divisional arrangement increases the efficiency of the court. He says: "In the first place, since fewer judges participate in the hearing of each case, the time required for this purpose from each judge could be reduced in proportion to the number of divisions. Time for fuller arguments may be given counsel, without requiring longer hours from the judges. In the second place, each judge will no longer be expected to investigate all the cases coming before the court and to participate in consultation regarding them, but his duties will ordinarily be

[3] Speech of Professor Sunderland before the Twenty-Seventh Annual Meeting of the Association of American Law Schools; 1929 Handbook, p. 89.

[4] Id. p. 91.

[5] 1929 Handbook of the Association of American Law Schools, p. 92.

[6] Kelly: "A Suggested Reform of the Philippine Judiciary," Philippine Law Journal, Vol. IX, No. 5, p. 195.

limited to those cases assigned to his own division. By this means the number of decisions for which each judge will be responsible can be reduced in exact proportion to the number of divisions. And in the third place, the divisional arrangement will make it practicable to add new judges when needed." [7]

Professor Dodd, however, contends that "mere mechanical devices, such as increasing the number of judges, do not solve the problem, and in a single court successful conference becomes difficult with a membership of more than nine. There is little more of a logical ground for determining when cases shall go from a division to the full court for consideration. Moreover, there is often no single authoritative determination of the law, and counsel are apt to maneuver their cases into the division likely to be most favorable. A single court sitting in divisions may be the more effective agency for the disposition of cases, but it is not likely to establish or maintain a leadership in legal development within the jurisdiction." [8]

From a vertical section, the Philippine judicial organization presents a centralized system of three courts, with the Supreme Court open to all appeals from the lower courts. The justice of the peace courts with their constricted jurisdiction are practically useless. It is now sought to insert a fourth court in between the courts of first instance and the Supreme Court, which partaking more of the nature of the Supreme Court, does not have its powers of final disposal. The justification advanced for such an intermediate court is to draw away much of the cases from the Supreme Court so that the latter can have time for the proper study of its cases and turn out worthwhile opinions.

Much as the scheme looks attractive and imagination-gripping, the writer cannot subscribe to the new court because of inherent defects in the system and because of peculiar native conditions which make the court impracticable.

Conflict of jurisdiction will always remain a problem. There is no mechanical means of dividing cases between the two courts, although it is understood that the Supreme Court must have the important cases. But what is important today may not be so tomorrow, either because of new regulatory legislation, social or economic changes, or settled jurisprudence. A reassignment

[7] Speech of Professor Sunderland before the Twenty-Seventh Annual Meeting of the Association of American Law Schools; 1929 Handbook, pp 94-95.

[8] Speech of Professor Dodd before the Twenty-Seventh Annual Meeting of the Association of American Law Schools; 1929 Handbook, pp. 86-87.

of cases will have to be made every ten years or less, and considering the fact that any change in the jurisdiction of the Supreme Court is always with the consent of an indifferent Congress, the problem attains enormous proportions. Should there be no changes, the lower court may even be forced to usurp the importance of the Supreme Court.

The series of four trials and appeals, from the justice of the peace court to the Supreme Court before a final decision can be obtained, taxes to the limit the resources, time, and effort of both litigants and courts. The system would be only a process of prolonging litigation and delaying justice. To conceive that the litigant will be satisfied with a decision of the intermediate court of appeals is rubbing the hair wrong end, as in practice lawyers and clients carry their cases to the Supreme Court despite the fact that the jurisprudence covering their cases is already settled in many former decisions. Even if such cases can only be certified to the Supreme Court by certiorari, determining the applications will be just as burdensome.

The relief given to the Supreme Court because of the compulsory shifting of cases through the court of appeals is illusory. To preserve the supervisory power of the Supreme Court and achieve a unified command in jurisprudence, it is indispensable that decisions of the lower tribunal must be reviewed on appeal or certiorari by the Supreme Court. Although the Supreme Court may not take cognizance of cases brought by certiorari, the docket is just as much congested by such applications.

It may also happen that issues presented in the intermediate court of appeals in one case are similar to issues presented to the Supreme Court in a more important case. If the decisions of the lower court is final, and the verdict conflicts with that given by the Supreme Court in another case, a growing number of dissatisfied litigants will be created who will eventually undermine the confidence reposed on decisions of the high tribunal. Should appeals be allowed, another problem equally serious arises when the plaintiff wins in the lower court and loses on a reversal in the Supreme Court by a bare majority. It may thus result that, with fourteen justices of similar qualifications who sat on the case, the appellant will win on the vote of a minority.

The only logical means of meeting growing appellate business is by increasing the number of justices to thirteen and

create a third division if necessary. Although the supreme court in division has defects, it is peculiarly adapted to the conditions in the Philippine Islands, and lends itself readily to the powers granted the Philippine government by the Jones Law. The local legislature can increase or decrease the membership of the court any time without the necessity of consulting Congress.

Then the greater number of the cases are not precedent cases but only mediocre litigations whose counterparts had been decided many times before. The divisional arrangement is fluid and divisions can be organized at will to dispose of those mediocre cases that are congesting the docket and just as easily be dissolved as soon as the house-cleaning is finished.

There is no need for the exercise of leadership, as Mr. Dodd deplores, when the cases are only so many other ordinary cases decided before. The divisions can take care of those without the Supreme Court surrendering leadership, while decisions will also be final and less expensive and the course of justice more speedy.

The geographical area, population, and economic development of the Philippines do not warrant the establishment of a heirachy of courts as Professor Frankfurter pictures the Federal and the New York Courts.[9] Dividing the Philippines into circuits is expensive and impractical, nor is the amount of litigations as enormous as in New York to necessitate so many appellate courts. Making the Federal and New York supreme courts sit in divisions would have been inadequate. It is not so in the Philippine Islands. The leadership now enjoyed by the Federal Supreme Court and the New York Court of Appeals may also be traced not only to their form, but also to the physiology of their functions, and the presence of such eminent jurists as Holmes, Brandeis, and Cardozo. Michigan enjoyed the same leadership when Cooley was in the Michigan bench. Saturdays in the Federal and New York supreme courts are always used for conference and discussion, a practice which would very well be adopted by the Philippine Supreme Court once it is relieved of work by a third division. The use of memorandum opinions, especially on cases whose counterparts were decided many times before, will also relieve the court of much of its

[9] Speech of Professor Frankfurter before the Twenty-Seventh Annual Meeting of the Association of American Law Schools, 1929 Handbook, pp. 95-98.

work and give it the necessary time to deliberate on the one percent of precedent cases brought to it.

The New York and Federal scheme calls for some finality in the decisions of the appellate and circuit courts. Professor Sunderland points out that these subordinate courts, rather than being intermediate courts, are so many coordinate courts of final authority. The Supreme Court is only a court of review. If we ever adopt such a system, it will be advisable to reduce the membership of the Supreme Court to five and transfer the rest to the lower courts. The amount of business left for the highest bench will be so small as to make nine men idle most of the time.

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