# Recent Cases

## THE EMERGENCY POWERS CASES

L-2044, ARANETA vs. DINGLASAN
L-2756, ARANETA vs. ANGELES
L-3054, RODRIGUEZ vs. TREASURER OF PHIL.
L-3055, GUERRERO vs. COMM. OF CUSTOMS, ET AL.
L-3056, BARREDO vs. COMM. ON ELECTIONS, ET AL.

### DECISION

TUASON, *J.*:

Three of these cases were consolidated for argument and the other two were argued separately on other dates. Inasmuch as all of them present the same fundamental question which, in our view, is decisive, they will be disposed of jointly. For the same reason we will pass up the objection to the personality or sufficiency of interest of the petitioners in case G. R. No. L-3054 and case G. R. No. L-3056 and the question whether prohibition lies in cases Nos. L-2044 and L-2756. No practical benefit can be gained from a discussion of these procedural matters, since the decision in the cases wherein the petitioners' cause of action or the propriety of the procedure followed is not in dispute, will be controlling authority on the others. Above all, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, sweeping aside, if we must, technicalities of procedure. (Avelino vs. Cuenco, G. R. No. L-2821.)

The petitions challenge the validity of executive orders of the President avowedly issued in virtue of Commonwealth Act No. 671. Involved in Cases Nos. L-2044 and L-2756 is Executive Order No. 62, which regulates rentals for houses and lots for residential buildings. The petitioner, J. Antonio Araneta, is under prosecution in the Court of First Instance of Manila for violation of the provisions of this Executive Order, and prays for the issuance of the writ of prohibition to the Judge and the City Fiscal. Involved in Case L-3055 is Executive Order No. 192, which aims to control exports from the Philippines. In this case, Leon Ma. Guerrero seeks a writ of mandamus to compel the Administrator of the Sugar Quota Office and the Commissioner of Customs to permit the exportation of shoes by the petitioner. Both officials refuse to issue the required export license on the ground that the exportation of shoes from the Philippines is forbidden by this Executive Order. Case No. L-3054 relates to Executive Order No. 225, which appropriates funds for the operation of the Government of the Republic of the Philippines during the period from July 1, 1949 to June 30, 1950, and for other purposes. The petitioner, Eulogio Rodriguez, Sr., as a tax-payer, an elector, and president of the Nacionalista Party, applies for a writ of prohibition to restrain the Treasurer of the Philippines from disbursing money under this

* The majority decision on the above-entitled cases and the resolution on the motions filed by petitioners subsequent to the promulgation of said decision are herein reprinted in full. We regret our inability to reproduce the separate concurring and dissenting opinions due to lack of space.—Editor.

Executive Order. Affected in Case No. L-3056 is Executive Order No. 226, which appropriates ₱6,000,000.00 to defray the expenses in connection with, and incidental to, the holding of the national elections to be held in November, 1949. The petitioner, Antonio Barredo, as a citizen, tax-payer and voter, asks this Court to prevent "the respondents from disbursing, spending or otherwise disposing of that amount or any part of it."

Notwithstanding allegations in the petitions assailing the constitutionality of Act No. 671, the petitioners do not press the point in their oral argument and memorandum. They rest their case chiefly on the proposition that the Emergency Powers Act (Commonwealth Act No. 671) has ceased to have any force and effect. This is the basic question we have referred to, and it is to this question that we will presently address ourselves and devote greater attention. For the purpose of this decision, only, the constitutionality of Act No. 671 will be taken for granted, and any dictum or statement herein which may appear contrary to that hypothesis should be understood as having been made merely in furtherance of the main thesis.

Act No. 671 in full is as follows:

AN ACT DECLARING A STATE OF TOTAL EMERGENCY AS A RESULT OF WAR INVOLVING THE PHILIPPINES AND AUTHORIZING THE PRESIDENT TO PROMULGATE RULES AND REGULATIONS TO MEET SUCH EMERGENCY.

*Be it enacted by the National Assembly of the Philippines*:

SECTION 1. The existence of war between the United States and other countries of Europe and Asia, which involves the Philippines, makes it necessary to invest the President with extraordinary powers in order to meet the resulting emergency.

SEC. 2. Pursuant to the provisions of Article VI, section 26, of the Constitution, the President is hereby authorized, during the existence of the emergency, to promulgate such rules and regulations as he may deem necessary to carry out the national policy declared in section 1 hereof. Accordingly, he is, among, other things, empowered (a) to transfer the seat of the Government or any of its subdivisions, branches, departments, offices, agencies or instrumentalities; (b) to reorganize the Government of the Commonwealth including the determination of the order of precedence of the heads of the Executive Department; (c) to create new subdivisions, branches, departments, offices, agencies or instrumentalities of government and to abolish any of those already existing; (d) to continue in force laws and appropriations which would lapse or otherwise become inoperative, and to modify or suspend the operation or application of those of an administrative character; (e) to impose new taxes or to increase, reduce, suspend or abolish those in existence; (f) to raise funds through the issuance of bonds or otherwise, and to authorize the expenditure of the proceeds thereof; (g) to authorize the national, provincial, city or municipal governments to incur in overdrafts for purposes that he may approve; (h) to declare the suspension of the collection of credits or the payments of debts; and (i) to exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce the authority.

SEC. 3. The President of the Philippines shall as soon as practicable upon the convening of the

Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted.

SEC. 4. This Act shall take effect upon its approval and the rules and regulations promulgated hereunder shall be in force and effect until the Congress of the Philippines shall otherwise provide.

Section 26 of Article VI of the Constitution provides:

"In time of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy."

Commonwealth Act No. 671 does not in term fix the duration of its effectiveness. The intention of the Act has to be sought for in its nature, the object to be accomplished, the purpose to be subserved, and its relation to the Constitution. The consequences of the various constructions offerred will also be resorted to as additional aid to interpretation. We test a rule by its results.

Article VI of the Constitution provides that any law passed by virtue thereof should be "for a limited period." "Limited" has been defined to mean "restricted; bounded; prescribed; confined within positive bounds; restrictive in duration, extent or scope." (Encyclopedia Law Dictionary, 3rd Ed. 669; Black's Law Dictionary, 3rd Ed., 1120.) The words "limited period" as used in the Constitution are beyond question intended to mean restrictive in duration. Emergency, in order to justify the delegation of emergency powers, "must be temporary or it can not be said to be an emergency." (First Trust Joint Stock Land Bank of Chicago vs. Adolph P. Arp, et al., 120 A.L.R. pp. 937-938).

It is to be presumed that Commonwealth Act No. 671 was approved with this limitation in view. The opposite theory would make the law repugnant to the Constitution, and is contrary to the principle that the legislature is deemed to have full knowledge of the constitutional scope of its powers. The assertion that new legislation is needed to repeal the act would not be in harmony with the Constitution either. If a new and different law were necessary to terminate the delegation, the period for the delegation, it has been correctly pointed out, would be unlimited, indefinite, negative and uncertain; "that which was intended to meet a temporary emergency may become permanent law," (Peck vs. Fink, 2 F (2d) 912); for Congress might not enact the repeal, and even if it would, the repeal might not meet with the approval of the President, and the Congress might not be able to override the veto. Furthermore, this would create the anomaly that, while Congress might delegate its powers by a simple majority, it might not be able to recall them except by a two-third vote. In other words, it would be easier for Congress to delegate its powers than to take them back. This is not right and is not, and ought not to be, the law. Corwin, President: Office and Powers, 1948 Ed., p. 160, says:

"It is generally agreed that the maxim that the legislature may not delegate its powers signifies at the very least that the legislature may not abdicate its powers. Yet how, in view of the scope that legislative delegations take nowadays, is the line between delegation and abdication to be maintained? Only, I urge, by rendering the delegated powers recoverable without the consent of the delegate; * * *."

Section 4 goes far to settle the legislative intention of this phase of Act No. 671. Section 4 stipulates that "the rules and regulations promulgat-

ed thereunder shall be in full force and effect until the Congress of the Philippines shall otherwise provide." The silence of the law regarding the repeal of the authority itself, in the face of the express provision for the repeal of the rules and regulations issued in pursuance of it, is a clear manifestation of the belief held by the National Assembly that there was no necessity to provide for the former. It would be strange if having no idea about the time the Emergency Powers Act was to be effective the National Assembly failed to make a provision for its termination in the same way that it did for the termination of the effects and incidents of the delegation. There would be no point in repealing or annulling the rules and regulations promulgated under a law if the law itself was to remain in force, since, in that case, the President could not only make new rules and regulations but he could restore the ones already annulled by the legislature.

More anomalous than the exercise of legislative functions by the Executive when Congress is in the unobstructed exercise of its authority is the fact that there would be two legislative bodies operating over the same field, legislating concurrently and simultaneously, mutually nullifying each other's actions. Even if the emergency powers of the President, as suggested, be suspended while Congress was in session and be revived after each adjournment, the anomaly would not be eliminated. Congress by a 2/3 vote could repeal executive orders promulgated by the President during congressional recess, and the President in turn could treat in the same manner, between sessions of Congress, laws enacted by the latter. This is not a fantastic apprehension; in two instances it materialized. In entire good faith, and inspired only by the best interests of the country as they saw them, a former President promulgated an executive order regulating house rentals after he had vetoed a bill on the subject enacted by Congress, and the present Chief Executive issued an executive order on export control after Congress had refused to approve the measure.

Quite apart from these anomalies, there is good basis in the language of Act No. 671 for the inference that the National Assembly restricted the life of the emergency powers of the President to the time the Legislature was prevented from holding sessions due to enemy action or other causes brought on by the war. Section 3 provides:

> "The President of the Philippines shall as soon as practicable upon the convening of the Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted."

The clear tenor of this provision is that there was to be only one meeting of Congress at which the President was to give an account of his trusteeship. The section did not say each meeting, which it could very well have said if that had been the intention. If the National Assembly did not think that the report mentioned in Section 3 was to be the first and last and did not think that upon the convening of the first Congress Act No. 671 would lapse, what reason could there be for its failure to provide in appropriate and clear terms for the filing of subsequent reports? Such reports, if the President was expected to continue making laws in the form of rules, regulations and executive orders, were as important, or as unimportant, as the initial one.

As a contemporary construction, President Quezon's statement regarding the duration of Act No. 671 is enlightening and should carry much weight, considering his part in the passage and in the carrying out of the law. Mr. Quezon, who called

the National Assembly to a special session, who recommended the enactment of the Emergency Powers Act, if indeed he was not its author, and who was the very President to be entrusted with its execution, stated in his autobiography, "The Good Fight," that Act No. 671 was only "for a certain period" and "would become invalid unless reenacted." These phrases connote automatical extinction of the law upon the conclusion of a certain period. Together they denote that a new legislation was necessary to keep alive (not to repeal) the law after the expiration of that period. They signify that the same law, not a different one, had to be repassed if the grant should be prolonged.

What then was the contemplated period? President Quezon in the same paragraph of his autobiography furnished part of the answer. He said he issued the call for a special session of the National Assembly "when it became evident that we were completely helpless against air attack, and that it was *most unlikely the Philippine Legislature would hold its next regular session* which was to open on January 1, 1942." It can easily be discerned in this statement that the conferring of enormous powers upon the President was decided upon with specific view to the inability of the National Assembly to meet. Indeed no other factor than this inability could have motivated the delegation of powers so vast as to amount to an abdication by the National Assembly of its authority. The enactment and continuation of a law so destructive of the foundations of democratic institutions could not have been conceived under any circumstance short of a complete disruption and dislocation of the normal processes of government. Anyway, if we are to uphold the constitutionality of the act on the basis of its duration, we must start with the premise that it fixed a definite, limited period. As we have indicated, the period that best comports with the constitutional requirements and limitations, with the general context of the law and with what we believe to be the main if not the sole *raison d'etre* for its enactment, was a period coextensive with the inability of Congress to function, a period ending with the convening of that body.

It is our considered opinion, and so hold, that Commonwealth Act No. 671 became inoperative when Congress met in regular session on May 25, 1946, and that Executive Orders Nos. 62, 192, 225 and 226 were issued without authority of law. In setting the first regular session of Congress instead of the first special session which preceded it as the point of expiration of the Act, we think we are giving effect to the purpose and intention of the National Assembly. In a special session, the Congress may "consider general legislation or only such subjects as he (President) may designate." (Section 9, Art. VI of the Constitution.) In a regular session, the power of Congress to legislate is not circumscribed except by the limitations imposed by the organic law.

Having arrived at this conclusion, we are relieved of the necessity of deciding the question as to which department of government is authorized to inquire whether the contingency on which the law is predicated still exists. The right of one or another department to declare the emergency terminated is not in issue. As a matter of fact, we have endeavored to find the will of the National Assembly—call that will an exercise of the police power or the war power—and, once ascertained, to apply it. Of course, the function of interpreting statutes in proper cases, as in this, will not be denied to the courts as their constitutional prerogative and duty. In so far as it is insinuated that the Chief Executive has the exclusive authority to say that war has

not ended, and may act on the strength of his opinion and findings in contravention of the law as the courts have construed it, no legal principle can be found to support the proposition. There is no pretense that the President has independent or inherent power to issue such executive orders as those under review. We take it that the respondents, in sustaining the validity of these executive orders rely on Act No. 600, Act No. 620, or Act No. 671 of the former Commonwealth and on no other source. To put it differently, the President's authority in this connection is purely statutory, in no sense political or directly derived from the Constitution.

Act No. 671, as we have stressed, ended *ex propio vigore* with the opening of the regular session of Congress on May 25, 1946. Acts Nos. 600 and 620 contain stronger if not conclusive indication that they were self-liquidating. By express provision the rules and regulations to be eventually made in pursuance of Acts Nos. 600 and 620, respectively approved on August 19, 1940 and June 6, 1941, were to be good only up to the corresponding dates of adjournment of the following sessions of the Legislature, "unless sooner amended or repealed by the National Assembly." The logical deduction to be drawn from this provision is that in the minds of the lawmakers the idea was fixed that the Acts themselves would lapse not later than the rules and regulations. The design to provide for the automatic repeal of those rules and regulations necessarily was predicated on the consciousness of a prior or at best simultaneous repeal of their source. Were not this the case, there would arise the curious spectacle, already painted, and easily foreseen, of the Legislature amending or repealing rules and regulations of the President while the latter was empowered to keep or return them in force and to issue new ones independently of the National Assembly. For the rest, the reasoning heretofore adduced against the asserted indefinite continuance of the operation of Act No. 671 equally applies to Acts Nos. 600 and 620.

The other corollary of the opinion we have reached is that the question whether war, in law or in fact, continues, is irrelevant. If we were to assume that actual hostilities between the original belligerents are still raging, the conclusion would not be altered. After the convening of Congress new legislation had to be approved if the continuation of the emergency powers, or some of them, was desired. In the light of the conditions surrounding the approval of the Emergency Powers Act, we are of the opinion that the "state of total emergency as a result of war" envisaged in the preamble referred to the impending invasion and occupation of the Philippines by the enemy and the consequent total disorganization of the Government, principally the impossibility for the National Assembly to act. The state of affairs was one which called for immediate action and with which the National Assembly would not be able to cope. The war itself and its attendant chaos and calamities could not have necessitated the delegation had the National Assembly been in a position to operate.

After all the criticisms that have been made against the efficiency of the system of the separation of powers, the fact remains that the Constitution has set up this form of government, with all its defects and shortcomings, in preference to the commingling of powers in one man or group of men. The Filipino people by adopting parliamentary government have given notice that they share the faith of other democracy-loving peoples in this system, with all its faults, as the ideal. The point is, under this framework of government, legislation is preserved for Congress all the

time, not excepting periods of crisis no matter how serious. Never in the history of the United States, the basic features of whose Constitution have been copied in ours, have the specific functions of the legislative branch of enacting laws been surrendered to another department—unless we regard as legislating the carrying out of a legislative policy according to prescribed standards; no, not even when that Republic was fighting a total war, or when it was engaged in a life-and-death struggle to preserve the Union. The truth is that under our concept of constitutional government, in times of extreme perils more than in normal circumstances "the various branches, executive, legislative, and judicial", given the ability to act, are called upon "to perform the duties and discharge the responsibilities committed to them respectively."

These observations, though beyond the issue as formulated in this decision, may, we trust, also serve to answer the vehement plea that for the good of the Nation, the President should retain his extraordinary powers as long as turmoil and other ills directly or indirectly traceable to the late war harass the Philippines.

Upon the foregoing considerations, the petitions will be granted. In order to avoid any possible disruption and interruption in the normal operation of the Government, we have deemed it best to depart in these cases from the ordinary rule relative to the period for the effectivity of decisions, and to decree, as it is hereby decreed, that this decision take effect fifteen days from the date of the entry of final judgment provided in Section 8 of Rule 53 of the Rules of Court in relation to Section 2 of Rule 35. No costs will be charged.

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TABULATION OF VOTES

A. Existence of Emergency Powers:

| For existence: 4 | Against existence: 5 |
|---|---|
| 1. Padilla | 1. Moran |
| 2. Montemayor | 2. Ozaeta |
| 3. Reyes | 3. Paras |
| 4. Torres | 4. Feria |
| | 5. Tuason |

Bengzon abstains.

Concl.: There is *no majority* of six required by law, hence, there is *no judgment* against the emergency powers.

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B. Validity of Ex. Ord. No. 62 (house rentals) and Ex. Or. No. 192 (export control):

| For validity: 0 | Against validity: 9 |
|---|---|
| | 1. Moran, |
| | 2. Ozaeta, |
| | 3. Paras, |
| | 4. Feria, |
| | 5. Bengzon, |
| | 6. Padilla, |
| | 7. Tuason, |
| | 8. Montemayor, and |
| | 9. Reyes. |

Torres took *no part.*

C. Validity of Ex. Od. No. 225 (general appropriations) and Ex. Or. No. 226 (elections appropriations):

For validity: 2
1. Padilla
2. Reyes

Against validity: 5
1. Ozaeta
2. Paras
3. Feria
4. Tuason
5. Montemayor

Moran voted for deferment of judgment.
Bengzon—abstaining on Validity but voting against the petition on other grounds.

Torres—reserves his vote.
Concl.—*No judgment,* there being *no majority of six.*

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*Tabulation of votes*

L-3054, Rodriguez vs. Tesorero
L-3056, Barredo vs. Comm. on Elections

On motion to disqualify Mr. Justice Padilla:

Deny motion: 8
Moran
Paras
Bengzon
Padilla
Tuason
Montemayor
Reyes
Torres

Grant: 0
None.
Reserve vote:
Ozaeta
Feria

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On motion to include vote of the late Mr. Justice Perfecto:

Deny motion: 7
Moran
Paras
Bengzon
Padilla
Montemayor
Reyes
Torres

Grant: 3
Ozaeta
Feria
Tuason

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On validity of Ex. Orders 225 & 226 (on appropriations):

Against validity: 6
Moran
Ozaeta
Paras
Feria
Tuason
Montemayor
Abstains—Torres.

For validity: 2
Padilla
Reyes
Bengzon—voted to deny petitions on other grounds.

On whether concurrence of 6 Justices or more majority of 6 Justices needed to declare Ex. Orders 225 & 226 null:

Mere majority of 6 sufficient: All concur. 10 to 0.

N.B.—On existence of emergency powers, the previous vote of 5 to 4 stands.

| Against existence: 5 | For existence: 4 |
|---|---|
| Moran | Padilla |
| Ozaeta | Montemayor |
| Paras | Reyes |
| Feria | Torres |
| Tuason | |

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RESOLUTION

MORAN, *C.J.:*

Petitioners filed motions asking (1) that Mr. Justice Padilla be disqualified to act in these cases; (2) that the vote cast by the late Mr. Justice Perfecto before his death be counted in their favor; and (3) that the opinion of the Chief Justice be counted as a vote for the nullity of Executive Orders Nos. 225 and 226.

I.

As regards the motion to disqualify Mr. Justice Padilla, the Court is of the opinion that it must not be considered, it having been presented after Mr. Justice Padilla had given his opinion on the merits of these cases. As we have once said "a litigant * * * cannot be permitted to speculate upon the action of the Court and raise an objection of this sort after decision has been rendered." (Govt. of the P. I. vs. Heirs of Abella, 49 Phil. 374).

Furthermore, the fact that Justice Padilla, while Secretary of Justice, had advised the President on the question of emergency powers, does not disqualify him to act in these cases for he cannot be considered as having acted previously in these actions as counsel of any of the parties The President is not here a party.

All the members of this Court concur in the denial of the motion to disqualify Mr. Justice Padilla, with the exception of Mr. Justice Ozaeta and Mr. Justice Feria who reserve their vote.

II.

With respect to the motion to include the vote and opinion of the late Mr. Justice Perfecto in the decision of these cases, it appears that Mr. Justice Perfecto died and ceased to be a member of this Court on August 17, 1949, and our decision in these cases was released for publication on August 26, 1949. Rule 53, Sec. 1, in connection with Rule 58, Sec. 1, of the Rules of Court, is as follows:

> "SECTION 1. *Judges who may take part.*—All matters submitted to the court for its consideration and adjudication will be deemed to be submitted for consideration and adjudication by any and all of the justices who are members of the court at the time when such matters are taken up for consideration and adjudication, whether such justices were or were not members of the court and whether they were or were not present at the date of submission; * * *."

Under this provision, one who is not a member of the court at the time an adjudication is made cannot take part in that adjudication. The word adju-

dication" means decision. A case can be adjudicated only by means of a decision. And a decision of this Court, to be of value and binding force, must be in writing duly signed and promulgated (Article VIII, Secs. 11 and 12, of the Constitution; Rep. Act No. 296, Sec. 21, Rule 53, Sec. 7, of the Rules of Court). Promulgation means the delivery of the decision to the Clerk of Court for filing and publication.

Accordingly, one who is no longer a member of this Court at the time a decision is signed and promulgated, cannot validly take part in that decision. As above indicated, the true decision of the Court is the decision signed by the Justices and duly promulgated. Before that decision is so signed and promulgated, there is no decision of the Court to speak of. The vote cast by a member of the Court after deliberation is always understood to be subject to confirmation at the time he has to sign the decision that is to be promulgated. That vote is of no value if it is not thus confirmed by the Justice casting it. The purpose of this practice is apparent. Members of this Court, even after they have cast their votes, wish to preserve their freedom of action till the last moment when they have to sign the decision, so that they may take full advantage of what they may believe to be the best fruit of their most mature reflection and deliberation. In consonance with this practice, before a decision is signed and promulgated, all opinions and conclusions stated during and after the deliberation of the Court, remain in the breasts of the Justices, binding upon no one, not even upon the Justices themselves. Of course, they may serve for determining what the opinion of the majority provisionally is and for designating a member to prepare the decision of the Court, but in no way is that decision binding unless and until duly signed and promulgated.

And this is practically what we have said in the contempt case against Abelardo Subido, promulgated on September 26, 1948:

> "que un asunto o causa pendiente en este Corte Suprema solo se considera decidido una vez registrada promulgada y publicada la sentencia en la escribania, y que hasta entonces el resultado de la votacion se estima como una materia absolutamente reservada y confidencial, perteneciente exclusivamente a las camaras interiores de la Corte."

In an earlier case we had occasion to state that the decisive point is the date of promulgation of judgment. In that case a judge rendered his decision on January 14; qualified himself as Secretary of Finance on January 16; and his decisions was promulgated on January 17. We held that the decision was void because at the time of its promulgation the judge who prepared it was no longer a judge. (Lino Luna vs. Rodriguez, 37 Phil. 186).

Another reason why the vote and opinion of the late Mr. Justice Perfecto can not be considered in these cases is that his successor, Mr. Justice Torres, has been allowed by this Court to take part in the decision on the question of emergency powers because of lack of majority on that question. And Mr. Justice Torres is not bound to follow any opinion previously held by Mr. Justice Perfecto on that matter. There is no law or rule providing that a successor is a mere executor of his predecessor's will. On the contrary, the successor must act according to his own opinion for the simple reason that the responsibility for his action is his and of no one else. Of course, where a valid and recorded act has been executed by the predecessor and only a ministerial duty remains to be performed for its completion, the act must be completed accordingly. For instance, where the predecessor had rendered a valid judg-

ment duly filed and promulgated, the entry of that judgment which is a ministerial duty, may be ordered by the successor as a matter of course. But even in that case, if the successor is moved to reconsider the decision, and he still may do so within the period provided by the rules, he is not bound to follow the opinion of his predecessor, which he may set aside according to what he may believe to be for the best interests of justice.

We are of the opinion, therefore, that the motion to include the vote and opinion of the late Justice Perfecto in the decision of these cases must be denied.

Mr. Justice Paras, Mr. Justice Bengzon, Mr. Justice Padilla, Mr. Justice Montemayor, Mr. Justice Alex. Reyes, and Mr. Justice Torres concur in this denial. Mr. Justice Ozaeta, Mr. Justice Feria and Mr. Justice Tuason dissent.

III.

In connection with the motion to consider the opinion of the Chief Justice as a vote in favor of petitioners, the writer has the following to say:

In my previous concurring opinion, I expressed the view that the emergency powers vested in Com. Act No. 671 had ceased in June 1945, but I voted for a deferment of judgment in these two cases because of two circumstances then present, namely, (1) the need of sustaining the two executive orders on appropriations as the lifeline of government and (2) the fact that a special session of Congress was to be held in a few days. I then asked, "Why not defer judgment and wait until the special session of Congress so that it may fulfill its duty as it clearly sees it?"

It seemed then to me unwise and inexpedient to force the government into imminent disruption by allowing the nullity of the executive orders to follow its reglamentary consequences when Congress was soon to be convened for the very purpose of passing, among other urgent measures, a valid purpose of passing, among other urgent measures, a valid appropriations act. Considering the facility with which Congress could remedy the existing anomaly, I deemed it a slavish submission to a constitutional formula for this Court to seize upon its power under the fundamental law to nullify the executive orders in question. A deferment of judgment struck me then as wise. I reasoned that judicial statesmanship, not judicial supremacy, was needed.

However, now that the holding of a special session of Congress for the purpose of remedying the nullity of the Executive Orders in question appears remote and uncertain, I am compelled to, and do hereby, give my unqualified concurrence in the decision penned by Mr. Justice Tuason declaring that these two executive orders were issued without authority of law.

While in voting for a temporary deferment of the judgment I was moved by the belief that positive compliance with the Constitution by the other branches of the government, which is our prime concern in all these cases, would be effected, an indefinite deferment will produce the opposite result because it would legitimize a prolonged or permanent evasion of our organic law. Executive orders which are, in our opinion, repugnant to the Constitution, would be given permanent life, opening the way to practices which may undermine our constitutional structure.

The harmful consequences which, as I envisioned in my concurring opinion, would come to pass should the said executive orders be immediately declared null and void, are still real. They have not disappeared by reason of the fact that a special session of Congress is not now forthcoming. However, the remedy now lies in the

hands of the Chief Executive and of Congress, for the Constitution vests in the former the power to call a special session should the need for one arises, and in the latter, the power to pass a valid appropriations act.

That Congress may again fail to pass a valid appropriations act is a remote possibility, for under the circumstances it fully realizes its great responsibility of saving the nation from breaking down; and furthermore, the President in the exercise of his constitutional powers may, if he so desires, compel Congress to remain in special session till it approves the legislative measures most needed by the country.

Democracy is on trial in the Philippines, and surely it will emerge victorious as a permanent way of life in this country, if each of the great branches of the government, within its own allocated sphere, complies with its own constitutional duty, uncompromisingly and regardless of difficulties.

Our Republic is still young, and the vital principles underlying its organic structure should be maintained firm and strong, hard as the best of steel, so as to insure its growth and development along solid lines of a stable and vigorous democracy.

With my declaration that Executive Orders Nos. 225 and 226 are null and void, and with the vote to the same effect or Mr. Justice Ozaeta, Mr. Justice Paras, Mr. Justice Feria, Mr. Justice Tuason and Mr. Justice Montemayor, there is a sufficient majority to pronounce a valid judgment on that matter.

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It is maintained by the Solicitor General and the *amicus curiae* that eight (8) Justices are necessary to pronounce a judgment on the nullity of the Executive Orders in question, under Section 9 of Rep. Act No. 296 and Art. VIII, section 10 of the Constitution. This theory is made to rest on the ground that said Executive Orders must be considered as laws, they having been issued by the Chief Executive in the exercise of the legislative powers delegated to him.

It is the opinion of the Court that the Executive Orders in question, even if issued within the powers validly vested in the Chief Executive, are not laws, although they may have the force of law, in exactly the same manner as the judgments of this Court, Municipal Ordinances and ordinary Executive Orders cannot be considered as laws, even if they have the force of law.

Under Art. VI, section 26, of the Constitution, the only power which, in times of war or other national emergency, may be vested by Congress in the President, is the power "to promulgate rules and regulations to carry out a declared national policy." Consequently, the Executive Orders issued by the President in pursuance of the power delegated to him under that provision of the Constitution, may be considered only as rules and regulations. There is nothing either in the Constitution or in the Judiciary Act requiring the vote of eight (8) Justices to nullify a rule or regulation or an executive order issued by the President. It is very significant that in the previous drafts of section 10, Art. VIII of the Constitution, "executive order" and "regulation" were included among those that required for their nullification the vote of two thirds of all the members of the Court. But "executive order" and "regulation" were later deleted from the final draft. (Aruego, The Framing of the Philippine Constitution, Vol. I, pp. 495-6.) and thus a mere majority of six members of this Court is enough to nullify them.

All the members of the Court concur in this view.

FOR ALL THE FOREGOING, the Court denies the motion to disqualify Mr. Justice Padilla, and the motion to include the vote of the late Mr. Justice Perfecto in the decision of these cases. And it is the judgment of this Court to declare Executive Orders Nos. 225 and 226, null and void, with the dissent of Mr. Justice Bengzon, Mr. Justice Padilla and Mr. Justice Reyes, upon the grounds already stated in their respective opinions, and with Mr. Justice Torres abstaining.

But in order to avoid a possible disruption or interruption in the normal operation of the Government, it is decreed, by the majority, of course, that this judgment take effect upon the expiration of fifteen (15) days from the date of its entry. No costs to be charged. (Eulogio Rodriguez, Sr. etc., vs. El Tesorero de Filipinas, G. R. Nos. L-3054 and L-3056).

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Court of Industrial Relations
MANILA CORDAGE WORKERS' UNION
MANILA CORDAGE COMPANY *

On August 10, 1949, the Manila Cordage Workers' Union (CLO), hereinafter designated as union, presented a fourteen-point petition to the Manila Cordage Company, hereinafter referred to merely as company. The following day, or on August 11, 1949, the petition was referred to the Department of Labor with a letter of the company, requesting that the dispute be certified to this Court for proper action. Said Department called the parties for a conference on August 16, and they appeared. Nothing, however, was accomplished on that day and the conference was continued the following day, August 17.

The case was handled for the Department of Labor by one of its conciliators, Mr. Cesar Sotto, upon whose suggestion both parties agreed to the creation of a Grievance Committee, composed of two representatives of the union and two representatives of the management, and presided over by Mr. Sotto himself. Then the Committee adjourned its meeting. Mr. Sotto summed up the results as follows:

> "I think, as far as the Grievance Committee is concerned, our work is over. All the points that were not agreed upon by both parties will be referred to the Court of Industrial Relations. As to the points that were granted by the Company they will not become final until both parties have gotten the OK. of their corresponding constituents. In which case, both parties will notify the

* The Editorial Board departs from an established policy of reporting only Supreme Court cases with the inclusion of the above CIR ruling. And here is its justification. An article appearing in the April, 1949 issue of the Philippine Law Journal has advanced the view that a strike staged during the effective duration of a CIR decision is illegal either because impliedly prohibited by section 17 of Commonwealth Act No. 103 or unlawful means have been employed inasmuch as the laborers should have filed an application in the Court for the modification of its judgment or its object is unlawful. This view finds reflection in the above CIR decision.—Editor.

Department of Labor of the final decision of the stockholders of the Manila Cordage Company as well as of the members of the Manila Cordage Workers Union so that the final agreement can be drafted and ratified by both parties.

"As to demands Nos. 1, 3, 5, 6 and 7, the Manila Cordage Workers Union may file a petition before the Court of Industrial Relations praying that the decision rendered by Judge de la Cruz, last July 24, 1947, be amended or altered as provided in Section 17, of the Commonwealth Act No. 103."

On August 18, 1949, the president of the union, in a letter to Mr. H. P. Strickler, President of the Company, requested for a union-management conference at 2:00 o'clock in the afternoon of that day The conference was held but it ended in disagreement. The following morning, August 19, the laborers did not return to work. In other words, they went on Strike.

Soon after the receipt of the certification of this case from the Department of Labor, the Court set the case for preliminary hearing on August 26. After a preliminary exchange of views, the Court asked if the workers were not willing to resume work, but the union representatives, Mr. Cipriano Cid and Mr. Guillermo Capadocia, asked for time to consult the members of the union. In the second conference on August 29, the same union representatives, after securing some concessions, stated that the strikers would not return to work unless Demand No. 11, asking that Assistant Superintendent Nazario Geronimo and Inspector Diosdado Centeno of the company be relieved of their jobs for anti-union activities, was granted first. They insisted that at least these two employees should be suspended during the pendency of their case or given other assignments where they would have no dealings with the other workers of the company. Unwilling to remove or suspend any of its employees without investigation and justifiable cause, the company forthwith petitioned for the issuance of an order by the Court declaring the stroke unjustified and illegal and authorizing the dismissal of the strikers and the hiring of new workers. This verbal petition was followed by a written one substantially to the same effect.

After a careful weighing of the evidence, oral and documentary, adduced by both sides, it appears conclusively established—

(1) That about one-half of the demands presented were determined by this Court in a decision rendered by it on July 24, 1947;

(2) That the strike was called chiefly because the company refused to grant the demand that two of its trusted employees, Assistant Superintendent Geronimo and Inspector Centeno, be relieved of their duties;

(3) That the strike was declared in violation of a decision of a Grievance Committee, composed of two representatives of each party and chairmaned by a Department of Labor official, to the effect that the demands which could not be settled by said Committee would be submitted to the Court of Industrial Relations;

(4) That the strike was called without previous notice either to the Department of Labor or to the management, the latter having heard that such strike was in the offing only at about 4:00 o'clock of the day preceding that of the strike; and

(5) That the strike was called without the union having notified the Chairman of the Grievance Committee or the Department of Labor of the rejection by the union members of the decision of said Committee regarding certain demands.

Since liberation, this is the third dispute between the same parties that has reached this Court. The first occurred in 1946 when on June 4 of said

year the same union called a strike of the workers in the respondent company as a consequence of some demands on which the parties could not arrive at any agreement. That strike ended only when the strikers were ordered to return to work by a decision of this Court of July 26, 1946. Less than a year thereafter, or, to be exact, on April 25, 1947, the same laborers struck again when a set of demands were not granted by the management. The dispute was decided by this Court on July 24, 1947, the decision reading, in part, as follows:

"Between the same parties, on July 26, 1946, Judge Arsenio C. Roldan of this Court promulgated his decision in Case No. 21-V, which is effective for three years in accordance with the provisions of our law. Instead of presenting a motion in Court to revise the above decision, the respondent union presented another set of demands to the management, which precipitated the strike of April 25, 1947. The demands were contained in a letter dated April 14, 1947, addressed to the Manager of the Manila Cordage Company.

"Referring to the effectivity of a decision of the Court of Industrial Relations, there can be no doubt that it is the intention of the law that as between the parties in an industrial dispute, multiplicity of action in industrial disputes between the parties should be avoided in order to maintain the peaceful relation and cooperation between them. If circumstances arise justifying the revision of said decision, any of the parties may properly appear and request the Court for redress of grievances and it becomes the duty of the said Court to hear the parties again and readjust its ruling if justified by the circumstances.

"In this case, when the new demands were presented to the management on April 14, 1947, and when said union declared a strike on April 25, 1947, one year has not elapsed yet from the time that Judge Roldan promulgated his decision in Case No. 21-V. Instead of declaring a strike, the respondent union could have appealed to the Court for redress of grievances, especially the evidence shows that the Manager of the Manila Cordage Company was willing and inviting the officers of the union to have the present case submitted to the Court of Industrial Relations for peaceful settlement, but which the union refused. They decided to strike beginning at 9:30 A.M. on April 25, 1947."

And now after a little over two years, the same workers are again on strike. It should be noted again that many of the demands in the present case were settled already in the 1947 decision of this Court above-referred to, and the company has signified its willingness to grant some of the remaining demands according to the minutes of the Grievance Committee. As admitted by Guillermo S. Calayag, Regional Secretary of the CLO, the strike was caused by the refusal of the company to relieve Messrs. Geronimo and Centeno of their jobs. In the Grievance Committee meeting, however, it was decided to refer this particular demand to the Court of Industrial Relations.

Under the law, the decision of this Court of July 24, 1947, is still effective at the present time, and the only way by which it could be altered, modified or set aside, or any question involved therein reopened is for either party to apply to this Court. Apparently, it was the intention of the union in the present case to secure a revision of the awards contained in said decision without the intervention of the Court.

On the basis of the foregoing facts and antecedents, we are called upon to decide whether the strike in the instant case is unjustified and illegal and whether the management should be authorized to hire new men to take the place of the strikers.

Where collective bargaining is the chief, if not the sole, method of settling industrial disputes, strike is undoubtedly a very effective weapon in the hands of labor although it is carried on always at a great sacrifice on the part of the strikers. In the Philippines, collective industrial disputes are settled by direct negotiation or collective bargaining between the parties, by conciliation or mediation by the Department of Labor and the Court of Industrial Relations, and, if both of these methods fail, by compulsory arbitration by said Court. This last method is the most used and has proven to be the most effective.

Our arbitration procedure is based on legislation rather than on mutual agreement; it is a system of judicial settlement administered by this Court. Because this Court is possessed of the power to enjoin or end a strike, the use of that weapon has been considerably curtailed.

We are not concerned here with the merits or demerits of our system of compulsory arbitration, and nothing in this opinion should be interpreted as detracting from the merits of collective bargaining or of conciliation. The important thing to remember is that strike, as an instrument of self-help, is, in a way, incompatible with the authoritative control exercised by this Court.

Although no express prohibition against strike exists in our laws, the tendency, nay the policy, is to prevent its occurrence or prolongation. This finds justification not only in our statutes and judicial decisions but also in the exigencies of our present economic and industrial status.

While industry should be required to maintain appropriate minimum standards in the matter of wages, working hours and other conditions of employment to enable the workers to meet the essential necessities of civilized life, including some kind of cultural and recreation facilities for themselves and their families, labor should keep its demands within reasonable bounds so as not to discourage investment of capital in much-needed industries. We should not lose sight of the fact that the Philippines is only in the early stage of industrialization and economic development. That we lack sufficient capital to finance our economic program is an admitted fact. It is, therefore, essential that we avoid discouraging investors, foreign and domestic, from opening new industries or enlarging existing ones. On the contrary, they should be attributed and encouraged in every possible way to help develop our economy. In that way, we would not only promote the general welfare but would increase employment opportunities in the interest of the laboring masses.

From the standpoint of labor alone, what should really be the correct attitude toward this weapon called "strike" in the light of present-day conditions and legislation in the Philippines? Let us begin by assuming that this weapon is ordinarily the most effective means of protecting or enforcing the rights of labor. A strike involves misery and distress to the workers themselves because while out of work they and their families are deprived of the much-needed income, not to mention the injury inflicted upon the employer and the public at large. This is especially true in the Philippines where the labor associations are generally not in a position to extend financial aid to their members in case of need. The labor movement here has not yet reached a stage in which the unions may engage in long contests of economic strength with employers. The

success or failure of a strike depends, in a large measure, upon the strength of the union backing it—strength in extent of membership and financial resources. It also depends upon the state of public opinion, and public opinion reacts sharply to a strike declared without apparent justification.

Is strike necessary to win? In the Philippines, no. When an industrial conflict occurs, it soon goes to the Court of Industrial Relations which, through the exercise of its sweeping arbitral power, decides the matters in dispute without regard to the fact that the conflict was accompanied or not by a strike. It is a mistake for a union to entertain the belief that by striking it would gain any advantage in so far as this Court is concerned. It has much to lose and practically nothing to gain.

Considering that, under existing conditions, the disadvantages of a strike in this country far outweigh the advantages, if any, it would do well for our labor associations to exercise utmost prudence and moderation in deciding to use that weapon in a given industrial dispute. A mistake in that connection is likely to prove costly not only to the parties immediately concerned but to the general public.

However lenient this Court may want to be on the side of the union, we cannot escape the conclusion that the strike in this case was resorted to without any justification. In the first place, its purpose—to procure the removal of the two co-employees of the strikers—hardly a permissible one, because, as a rule, no employee should be removed, laid off or suspended without a hearing. In the second place, it violated in effect a decision of the Grievance Committee in which the strikers were represented, to the effect that this particular issue should be submitted to this Court together with the other matters on which no agreement was reached. In the third place, no previous warning or notice was served on the management of the Department of Labor in spite of the understanding that said Office should be notified of the final decision of the union members regarding the demands settled by said Committee. Worthy of note also is the circumstance that there is a decision of this Court which is still in force covering many of the important demands. Moreover, it is significant that everytime a collective dispute arises between the union and the company, the union resorts to strike.

For the foregoing consideration, this Court is of the opinion, and so hold, that the strike of the workers in the instant case is highly unjustified and unreasonable.

The strikers are hereby ordered to return to their respective posts within two (2) days from the receipt of notice of this order, failing in which the company is authorized to replace them with new workers.

As a preventive measure, the workers concerned are hereby prohibited from declaring another strike within three (3) years from the date of this order.

This order shall take effect immediately.

IT IS SO ORDERED.

Manila, Philippines, September 16, 1949.

JUAN L. LANTING
*Associate Judge*