

## Recent Cases

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### LABOR—GRANT OF VACATION AND SICK LEAVE WITH PAY, NOT A VIOLATION OF LIBERTY TO CONTRACT.

This is an appeal from a decision of the Court of Industrial Relations in which the petitioner was ordered to grant to its employees increases in salaries and wages, per diems, and vacation and sick leave with pay. The petitioner contended that the doctrine laid down by the Court of Industrial Relations in effect "has deprived the Company of its right to enter into contract of employment as it and the employee may agree." The Supreme Court affirmed the decision holding that "the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality or where the public health demands that one party to the contract shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and where the individual health, safety and welfare are sacrificed or neglected, the State must suffer." "It is needless to remind all employers that the concession of vacation and sick leaves in the long run redounds to their benefit."<sup>1</sup>

The Constitution provides that "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." (Art. 2, sec. 5). It likewise provides that "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and agriculture." (Art. 14, sec. 6). The police power is one of the most essential powers of a State. It is the power of promoting the general welfare by restraining and regulating the use of liberty and property.<sup>2</sup> The Constitutional provisions cited above, as well as the exercise by the State of its police power have resulted in various types of legislation for the protection of the interests of the laboring class. Our labor laws were inspired by the Constitutional injunction making it the concern of the State to promote social justice to insure the well-being and economic security of all the people. Most significant among these laws are: C. A. No. 444, re-

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<sup>1</sup> *Leyte Land Transportation Co., Inc. v. Leyte Farmers' and Laborers' Union*, G. R. No. L-1377, May 12, 1948.

<sup>2</sup> *Sinco, Philippine Government and Political Law*, p. 456.

gulating the maximum hours of labor; C. A. Nos. 37 and 211, fixing minimum wages for certain Government employees; C. A. No. 303, providing for the time and manner of payment of salaries of laborers and employees; C. A. No. 103, creating the Court of Industrial Relations, with power to determine and fix minimum wages for workers.<sup>3</sup> The Workmen's Compensation Act and The Employer's Liability Act; Act 3071, regulating the employment of women and children in places of labor; C. A. No. 213, regulating legitimate labor organizations; C. A. No. 647, granting maternity leave to married women in the service of the Government; Rep. Act No. 239, providing for free emergency, medical and dental treatment for employees and laborers of commercial, industrial and agricultural establishments; Secs. 284-286 of the Revised Administrative Code, granting vacation and sick leave with pay to Government employees. In addition, our Constitution expressly authorizes compulsory arbitration. In line with modern conditions and modern legislative intent, it has been held that the right of an employer to freely select or discharge his employees is subject to regulation by the State.<sup>4</sup> An employer has to pay additional compensation for work done on Sundays and legal holidays.<sup>5</sup> An employer may be ordered to pay additional compensation to night laborers.<sup>6</sup> In the United States, Federal Courts and Administrative Boards have gone even further. It has been held that hours worked, are not limited to the time spent in active labor but include time given by the employee to the employer although part of the time may be spent in idleness such as waiting time. Under certain circumstances travel time was considered hours worked. Time spent in attending meetings and lectures should be considered hours worked, if attendance is not voluntary. The National Labor Relations Board granted pay during period of illness.<sup>7</sup> Pay given for time actually spent on vacation, sick leave and holidays is not part of regular rate.<sup>8</sup> War Labor Board awards included night bonus, overtime, holiday pay, vacations, call-in-pay.<sup>9</sup> Sick leave with pay was granted by the National War Labor Board.<sup>10</sup> Sick leave is now said to be related

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<sup>3</sup> *Antamok Gold Fields Mining Co. v. Court of Industrial Relations*, 40 O. G., 8th Supp.; *The International Hardwood and Veneer Co. v. The Pangil Federation of Labor*, 40 O. G., 9th Supp.; *The Central Azucarera de Tarlac v. The Court of Industrial Relations*, 40 O. G., 9th Supp.

<sup>4</sup> *Manila Trading and Supply Co. v. Zulue'a*, G. R. No. 46853; *Manila Electric Co. v. National Labor Union, Inc.*, G. R. No. 47279; *Bohol Land Transportation v. B. L. T. Employees' Union*, 40 O. G., 13th Supp.

<sup>5</sup> *Manila Electric Co. v. Public Utilities Employees' Association*, G. R. No. L-1206, Oct. 30, 1947.

<sup>6</sup> *The Shell Company of the Phil. Islands, Ltd. vs. National Labor Union*, G. R. No. L-1309, July 26, 1948.

<sup>7</sup> *Niles Fire Brick Co.*, 30 NLRB, p. 426, 1941.

<sup>8</sup> Wage-Hour Div. Release No. R-1625 (1941).

<sup>9</sup> *Columbia Law Review*, Vol. 45, No. 6, p. 889, Nov. 1945.

<sup>10</sup> *Columbia Law Review*, Vol. 44, No. 3, p. 431, May, 1944.

to wages and therefore within the stabilization policy.<sup>11</sup> Employers pay employees during periods of illness, vacation, or other miscellaneous periods of leave to reward them for faithfulness, loyalty, and length of service, to bolster personnel morale, to safeguard the physical health and well-being of employees by giving them needed rest and relaxation, and to conform to progressive business practice, etc.<sup>12</sup> In the United States, Federal legislations most outstandingly affecting labor activities are contained in The Sherman Act, Clayton Act, Norris Act, National Labor Relations Act, and in the Fair Labor Standards Act of 1938. The Sherman Act declares illegal, contracts, combinations and conspiracies in restraint of trade and commerce. The Clayton Act was passed to exempt labor combinations from the vice of the Sherman Act upon the theory that the labor of a human being is not a commodity or an article of commerce, and to limit both the employment and the manner of employment in federal courts, of the labor injunction. The Norris Act was passed to limit the equity powers of federal courts in cases involving labor controversies. It prohibits the enforcement of Yellow-Dog contracts. The National Labor Relations Act has for its objective the promotion of industrial peace by encouraging and directing collective bargaining and the equalization of the bargaining power between employers and employees by removing restraints upon the right of employees to organize. The Fair Labor Standards Act contains minimum wage provisions, maximum hours, collective bargaining, and child labor provisions. On June 23, 1947, the Taft-Hartley Law was enacted, Sec. 8, (b), (6) of which prohibits causing or attempting to cause an employer to pay for services not actually rendered. Thus, there may be called into question the validity of contract provisions and the use of economic pressure to obtain compensation for such "non-working" time as rest periods, lunch periods, breakdown time, make-ready time, on-call time, travel time, vacations, sick leave, holidays, spell-periods, and grievance presentation time.<sup>13</sup>

Art. 111, sec. 1 of the Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law . . ." Art. 1255 of the Civil Code provides: "The contracting parties may establish pacts, clauses and conditions which they deem advisable, provided they are not contrary to law, morals, or public order." The right to enter into lawful contracts constitutes one of the liberties of the people of the State. If that right be struck down or arbitrarily interfered with, it is a substantial impairment of the

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<sup>11</sup> Portland Traction Co., 13 War Labor Report, p. 138, Dec. 1943.

<sup>12</sup> Ludwig Teller, *Labor Disputes and Collective Bargaining*, No. 2, Interpretative Bulletin, No. 4, p. 1158.

<sup>13</sup> *North Carolina Law Review*, Vol. 26, No. 1, p. 23, Dec. 1947.

liberty of the people under the Constitution. The legislature under the Constitution is not permitted to prescribe the terms of a legal contract and thereby deprive the citizens of the State from entering freely into such contracts according to their own convenience and advantage, so long as the contracts entered into are not prohibited by public policy or morals.<sup>14</sup> The right to acquire, hold, and dispose of property includes the right to make reasonable and proper contracts.<sup>15</sup> The policy of the law is that the freedom of persons to enter into contract should not be lightly interfered with.<sup>16</sup>

Though it may seem that the liberty to contract guaranteed by the Constitution threatens to negative the Constitutional provisions on social justice and protection to labor, it may be said that liberty to contract with respect to wages is subject to the proper exercise of the police power of the State, to the end that society as a whole as well as its individual members, shall be protected against the evil effects of oppressive and unconscionable contracts.<sup>17</sup> The State may in the exercise of its police power, alter, restrict, or destroy the interests of life, liberty and property guaranteed by the Constitution to the individual, for supposedly greater social considerations.<sup>18</sup> The freedom to contract guaranteed by the Constitution may be limited by law through a proper exercise of the paramount police power.<sup>19</sup> It does not mean unrestrained liberty because the liberty safeguarded by the Constitution is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people.<sup>20</sup> There are times when private rights must give way to public welfare—such modification of private contracts, when demanded by considerations of the public welfare is not in any sense in derogation of the fundamental principle.<sup>21</sup> The modern period has been one in which a new impulse towards increased regulation of labor relations and of consequent limitation of liberty of contract has gathered strength. From the employer's side the voluntary element is being reduced to a minimum, while from the side of the employees, the bargaining

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<sup>14</sup> *People v. Pomar*, 46 Phil. 440.

<sup>15</sup> 8 *Cyclopedia of Law and Procedure*, p. 887.

<sup>16</sup> *Ferrazzini v. Gsell*, 34 Phil. 697.

<sup>17</sup> 31 *American Jurisprudence*, sec. 496, p. 1077.

<sup>18</sup> *Harvard Law Review*, Vol. 42, p. 886, 1929.

<sup>19</sup> *Pampanga Bus Co. v. Pambusco Employees' Union*, 38 O. G. p. 984; *Kwong Sing v. City of Manila*, 41 Phil. 103; *Muller v. Oregon*, 208 U. S. 412; *Bunting v. Oregon*, 243 U. S. 426; *West Coast Hotel Co. v. Parrish*, 300 U. S. 379; *Manila Electric Co. v. National Labor Union*, G. R. No. 47279; *Manila Trading & Supply Co. v. Zulueta*, G. R. No. 46853; *New York Central Railroad Co. v. White*, 243 U. S. 188; *Manila Electric Co. v. Public Utilities Employees' Association*, G. R. No. L-1206, Oct. 1947; *The Shell Co. of P. I., Ltd. v. National Labor Union*, G. R. No. L-1309, July 26, 1948.

<sup>20</sup> *West Coast Hotel Co. v. Parrish*, Id.

<sup>21</sup> *Columbia Law Review*, Vol. 44, No. 3, p. 414, May, 1944.

power of the latter is being more and more reenforced, by the compulsory support of the State.<sup>22</sup> It is well settled that paid vacations, shift bonuses, etc., and all other matters that directly or indirectly affect the employee's income or expenditures, form a part of wages, and are subject to the orders of any governmental agency having power to fix wages.<sup>23</sup> Laws regulating wages, hours and conditions of work have been passed to redress and equalize the employees' inferiority of bargaining advantage, to ameliorate the condition of the less-privileged classes, and to eliminate conditions detrimental to the maintenance of a reasonable standard of living. These laws evinced an increasing legislative readiness to reject the dogma that liberty to contract in labor relations is an inviolable principle, and an increasing willingness to regulate the labor bargain not only in the interest of the workers' health, but in order to relieve him from some of the consequences of an unequal bargaining power.<sup>24</sup> In the midst of changes that have taken place, it may be doubted if the pronouncement made by the Supreme Court in the case of *People vs. Pomar* still retains its virtuality as a living principle. The policy of *laissez faire* has to some extent given way to the assumption by the government of the right of intervention even in contractual relations affected with public interest.<sup>25</sup>

Lately, the doctrine enunciated in the case of *Leyte Land Transportation Co., Inc. v. Leyte Farmers' and Laborers' Union* has been reiterated and reaffirmed in the case of the *National Labor Union v. Benguet Consolidated Mining Company's Masinloc, Zambales Mines*<sup>26</sup> wherein the Court of Industrial Relations in granting sick leave with pay against the Company's contention that when a laborer gets sick, it is simply his misfortune, said: "Suffice it to say that the world has moved to a point where such a view is utterly indefensible. We no longer live in an epoch of extreme individualism when the misfortune of a person is of no concern to his neighbor. We live in an enlightened age of social justice when the interest of a few is at times sacrificed to the interest of the many . . . Where the parties do not stand upon an equality or where the public health demands that one party shall be protected against himself, the Government can intervene to prevent injustice."

The rationale of the decision is in line both with the present expressed policy of social justice in our Constitution and with the progressive jurisprudence of the times.

NORMA AGUILAR

<sup>22</sup> *Columbia Law Review*, Vol. 43, No. 5, p. 643, July, 1943.

<sup>23</sup> *Arbitration of Labor Disputes*, Updegraff and McCoy, p. 134.

<sup>24</sup> *Columbia Law Review*, Vol. 43, No. 5, p. 668, July, 1943.

<sup>25</sup> *Ang Tibay v. Court of Industrial Relations*, G. R. No. 46496, May 29, 1939.

<sup>26</sup> CIR, 70 B, June 12, 1948, *National Labor Union v. Benguet Consolidated Mining Company's Masinloc, Zambales Mines*.

## ABANDONMENT OF OFFICE:—

Plaintiff, a justice of the peace appointed in 1914 for one municipality, accepted the office of justice of the peace of a new district which includes the former and a new municipality during the occupation. During the liberation, he accepted an ad interim appointment of an enlarged district which includes besides the two towns, a third municipality, thereby enlarging his territorial jurisdiction. His appointment was turned down by the Commission on Appointments and a new judge was appointed in his place, hence this action to have himself declared legally entitled to the office of justice of the peace of the original district composed only of one municipality. The question raised before the court is: Does the acceptance by the plaintiff of two new appointments constitute abandonment of his office?

“Abandonment of an office by reason of the acceptance of another, in order to be effective and binding, should spring from and be accompanied by deliberation and freedom of choice, either to keep the old office or renounce it for another. Conditions and reasons of expediency called for the merging of the two towns into a new judicial district so that plaintiff's acceptance of the two appointments under abnormal conditions would not constitute abandonment. The original appointment stands and the new ad interim appointment served only as a restitution of the office which belonged to him but which he failed to hold because of, and during the war.” (Teves vs. Sindiong, G.R. L-2050, October 21, 1948; Garces vs. Bello, G.R. L-1363; Singson vs. Quintillan, et al., G.R. L-1273)

## ELECTION PROTEST; TIME ON APPEAL:—

The record on appeal in an election contest tried by the Court of First Instance was received in the Court of Appeals on May 22, 1948. A motion to dismiss said appeal was filed on ground that three months have expired without said appeal being heard or tried, according to the provisions of sections 178 and 177 of the Revised Election Code. The issue before the court is: Is the three month period

prescribed by said section 178 of the Revised Election Code mandatory or directory?

“Sections 177 and 178 of the Revised Election Code requiring trial or appellate courts to decide within a fixed period, election contests, is directory in nature. The purpose of the law is to impress the need of a speedy disposal of election contests, as imperatively demanded by public interest. To dismiss election contest or appeal taken therefrom because the respective courts have failed to render final decisions within the time limits of said sections, is to defeat the administration of justice upon factors beyond the control of the parties. Doctrine in *Portillo vs. Salvani* (54 Phil. 543) even as modified by the case of *Cacho vs. Abad* (61 Phil. 606) should be abandoned.” (*Querubin vs. Court of Appeals*, GR L-2581).

DISMISSAL OF APPEAL FOR FAILURE TO PROSECUTE:—

In an appeal from a judgment of the CFI in a criminal case brought to the Court of Appeals, the appellant failed to file his brief on time. The appellate court on its own motion but without notice to the appellant dismissed the appeal on the ground of failure to prosecute. A petition for reconsideration of the order of dismissal was subsequently filed which the court denied; hence this petition for certiorari. The issue before the court is: May the court dismiss an appeal on its own motion without notice to the appellant, on the ground of failure to prosecute?

“The filing of the motion for reconsideration has cured the defect or failure to give notice to the appellant, which notice is required by Rule 120, section 8, because if the notice had been given, the same reasons would have been alleged by the appellant as that set forth in the motion for reconsideration.” (*Baradi vs. People of the Philippines*, G.R. L-3658 promulgated December 9, 1948).

JOSE C. CAMPOS, JR.

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## AVELINO VS. CUENCO, G. R. NO. L-2821 \*

In G. R. No. L-2821, Avelino vs. Cuenco, the Court by a vote of six justices against four resolved to deny the petition.

Without prejudice to the promulgation of a more extended opinion, this is now written briefly to explain the principal grounds for the denial.

The Court believes the following essential facts have been established:

In the session of the Senate of February 18, 1949, Senator Lorenzo M. Tañada requested that his right to speak on the floor on the next session day, February 21, 1949, to formulate charges against the then Senate President Jose Avelino be reserved. His request was approved.

On February 21, 1949, hours before the opening of the session Senator Tañada and Senator Prospero Sanidad filed with the Secretary of the Senate a resolution enumerating charges against the then Senate President and ordering the investigation thereof.

Although a sufficient number of senators to constitute a quorum were at the Senate session hall at the appointed time (10:00 a.m.), and the petitioner was already in his office, said petitioner delayed his appearance at the session hall until about 11:35 a.m. When he finally ascended the rostrum, he did not immediately open the session, but instead requested from the Secretary a copy of the resolution submitted by Senators Tañada and Sanidad and in the presence of the public he read slowly and carefully said resolution, after which he called and conferred with his colleagues Senators Francisco and Tirona.

Shortly before 12:00 noon, due to the insistent requests of Senators Sanidad and Cuenco that the session be opened, the petitioner finally called the meeting to order. Except Senator Sotto who was confined in a hospital and Senator Confesor who is in the United States, all the Senators were present.

Senator Sanidad, following a long established practice, moved that the roll call be dispensed with, but Senator Tirona opposed said motion, obviously in pursuance of a premeditated plan of petitioner and his partisans to make use of dilatory tactics to prevent Senator Tañada from delivering his privilege speech. The roll was called.

Senator Sanidad next moved, as is the usual practice, to dispense with the reading of the minutes, but this motion was likewise opposed by Senators Tirona and David, evidently, again, in pursuance of the above-mentioned conspiracy.

Before and after the roll call and before and after the reading of the minutes, Senator Tañada repeatedly stood up to claim his right to deliver his one-hour privilege speech but the petitioner, then presiding continuously ignored him; and when after the reading of the minutes, Senator Tañada insisted on being recognized by the Chair, the petitioner

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\* Due to the importance of the case the first resolution of the Supreme Court wherein the Court refused to take jurisdiction is reproduced in full with the dissenting opinions except that of Justice Perfecto. The second resolution which overruled the first is also reproduced in full. The dissenting opinion will be printed in the next issue.

announced that he would order the arrest of any senator who would speak without being previously recognized by him, but all the while, tolerating the actions of his follower, Senator Tirona, who was continuously shouting at Senator Sanidad "Out of order!" every time the latter would ask for recognition of Senator Tañada.

At this juncture, some disorderly conduct broke out in the Senate gallery, as if by pre-arrangement. At about this same time Senator Pablo Angeles David, one of petitioner's followers, was recognized by petitioner, and he moved for adjournment of session, evidently, again, in pursuance of the above-mentioned conspiracy to muzzle Senator Tañada.

Senator Sanidad registered his opposition to the adjournment of the session and this opposition was seconded by herein respondent who moved that the motion of adjournment be submitted to a vote. Another commotion ensued.

Senator David reiterated his motion for adjournment and herein respondent also reiterated his opposition to the adjournment and again moved that the motion of Senator David be submitted to a vote.

Suddenly, the petitioner banged the gavel and abandoning the Chair hurriedly walked out of the session hall followed by Senators David, Tirona, Francisco, Torres, Magalona and Clarin, while the rest of the senators remained. Whereupon Senator Melecio Arranz, Senate President Pro-tempore, urged by those senators present took the Chair and proceeded with the session.

Senator Cabili stood up, and asked that it be made of record—it was so made—that the deliberate abandonment of the Chair by the petitioner, made it incumbent upon Senate President Pro-Tempore Arranz and the remaining members of the Senate to continue the session in order not to paralyze the functions of the Senate.

Senate President Pro-Tempore Arranz then suggested that respondent be designated to preside over the session, which suggestion was carried unanimously. The respondent thereupon took the Chair.

Upon motion of Senator Arranz, which was approved, Gregorio Abad was appointed Acting Secretary, because the Assistant Secretary, who was then acting as Secretary, had followed the petitioner when the latter abandoned the session.

Senator Tañada, after being recognized by the Chair, was then finally able to deliver his privilege speech. Thereafter Senator Sanidad read aloud the complete text of said Resolution (No. 68), and submitted his motion for approval thereof and the same was unanimously approved.

With Senate President Pro-tempore Arranz again occupying the Chair, after the respondent had yielded it to him, Senator Sanidad introduced Resolution No. 67, entitled "Resolution declaring vacant the position of the President of the Senate and designating the Honorable Mariano Jesus Cuenco Acting President of the Senate." Put to a vote, the said resolution was unanimously approved.

Senator Cuenco took the oath.

The next day the President of the Philippines recognized the respondent as acting president of the Philippine Senate.

By his petition in this *quo warranto* proceeding petitioner asks the Court to declare him the rightful President of the Philippine Senate, and oust respondent.

The Court has examined all principal angles of the controversy and believes that these are the crucial points:

- a. Does the court have jurisdiction over the subject-matter?
- b. If it has, were resolutions Nos. 68 and 67 validly approved?
- c. Should the petition be granted?

To the first question, the answer is in the negative, in view of the separation of powers, the political nature of the controversy (*Alejandrino vs. Quezon*, 46 Phil. 83; *Vera et al. vs. Avelino et al.*, 43 O. Gaz. 3597; and *Mabanag et al. vs. Lopez Vito et al.*, 43 O. Gaz. 2079) and the constitutional grant to the Senate of the power to elect its own president, which power should not be interfered with, nor taken over, by the judiciary. We refused to take cognizance of the *Vera* case even if the rights of the electors of the suspended senators were allegedly affected *without any immediate* remedy. A fortiori we should abstain in this case because the selection of the presiding officer affects only the Senators themselves who are at liberty *at any time* to choose their officers, change or reinstate them. Anyway, if, as the petition must imply to be acceptable, the majority of the Senators want petitioner to preside, his remedy lies in the Senate Session Hall—not in the Supreme Court.

The Court will not sally into the legitimate domain of the Senate on the plea that our refusal to intercede might lead into a crisis, even a revolution. No state of things has been proved that might change the temper of the Filipino people as peaceful and law-abiding citizens. And we should not allow ourselves to be stampeded into a rash action inconsistent with the calm that should characterize judicial deliberation.

The precedent of *Werts vs. Rogers* does not apply, because, among other reasons, the situation is not where two sets of senators have constituted themselves into **two senates** actually functioning as such (as in the said *Werts* case), there being no question that there is presently *one Philippine Senate only*. To their credit be it recorded that petitioner and his partisans have not erected themselves into **another** Senate. The petitioner's claim is merely that respondent has not been duly elected in his place in the same *one* Philippine Senate.

It is furthermore believed that the recognition accorded by the Chief Executive to the respondent makes it advisable, more than ever, to adopt the hands-off policy wisely enunciated by this Court in matters of similar nature.

The second question depends upon these sub-questions. (1) Was the session of the so-called rump Senate a continuation of the session validly assembled with twenty-two senators in the morning of February 21, 1949? (2) Was there a quorum in that session? Mr. Justice Montemayor and Mr. Justice Reyes deem it useless for the present, to pass on these questions once it is held, as they do, that the Court has no jurisdiction over the case. What follows is the opinion of the other four on those sub-questions.

Supposing that the Court has jurisdiction, there is unanimity in the view that the session under Senator Arranz was a continuation of the

morning session and that a minority of ten senators may not, by leaving the Hall, prevent the other twelve senators from passing a resolution that met with their unanimous endorsement. The answer might be different had the resolution been approved only by ten or less.

If the rump session was not a continuation of the morning session, was it validly constituted? In other words, was there the majority required by the Constitution for the transaction of the business of the Senate? Justices Paras, Feria, Pablo and Bengzon say there was, firstly because the minutes say so, secondly because at the beginning of such session there were at least fourteen senators including Senators Pundatun and Lopez, and thirdly because in view of the absence from the country of Senator Tomas Confesor twelve senators constitute a majority of the Senate of twenty-three senators. When the Constitution declares that a majority of "each House" shall constitute a quorum, "the House" does not mean "all" the members. Even a majority of all the members constitutes "the House." (*Missouri Pac. vs. Kansas*, 63 Law Ed. [U.S.] p. 239). There is a difference between a majority of "all the members of the House" and a majority of "the House," the latter requiring less number than the first. Therefore an absolute majority (12) of all the members of the Senate less one (23), constitutes constitutional majority of the Senate for the purpose of a quorum. Mr. Justice Pablo believes furthermore that even if the twelve did not constitute a quorum, they could have ordered the arrest of one, at least, of the absent members; and if one had been so arrested, there would be no doubt Quorum then, and Senator Cuenco would have been elected just the same inasmuch as there would be eleven for Cuenco, one against and one abstained.

In fine, all the four justices agree that the Court being confronted with the practical situation that of the twenty-three senators who may participate in the Senate deliberations in the days immediately after this decision, twelve senators will support Senator Cuenco and, at most, eleven will side with Senator Avelino, it would be most injudicious to declare the latter as the rightful President of the Senate, that office being essentially one that depends exclusively upon the will of the majority of the senators, the rule of the Senate about tenure of the President of the body being amendable at any time by that majority. And at any session hereafter held with thirteen or more senators, in order to avoid all controversy arising from the divergence of opinion here about quorum and for the benefit of all concerned, the said twelve senators who approved the resolutions herein involved could ratify all their acts and thereby place them beyond the shadow of doubt.

As already stated, the six justices hereinabove mentioned voted to dismiss the petition. Without costs. (Moran, C.J., concurs and dissents in a separate opinion. Perfecto, J., dissents in a separate opinion. Briones, J., dissents in a separate opinion. Tuason, J., dissents in a separate opinion.)

By Chief Justice MORAN

I believe that this Court has jurisdiction over the case. The present crisis in the Senate is one that imperatively calls for the intervention of this Court. Respondent Cuenco cannot invoke the doctrine of non-interference by the courts with the senate because

the legal capacity of his group of twelve senators to act as a senate is being challenged by petitioner on the ground of lack of quorum. (Attorney General *ex rel.* Werts vs. Rogers et al., 28 Atl. T26; 23 L. R. A. 354). If this group is found sufficient to constitute a quorum under the Constitution, then its proceedings should be free from interference. But if it is not possessed of a valid quorum, then its proceedings should be voided.

The issue as to the legal capacity of the Cuenco group to act as a senate cannot be considered a political question the determination of which devolves exclusively upon the senate. That issue involves a constitutional question which cannot be validly decided either by the Cuenco group or by the Avelino group separately, for, if the Cuenco group has no quorum, the Avelino group has decidedly less. And for obvious reasons, the two groups cannot act together inasmuch as the members of the Avelino group, possibly to avoid trouble, do not attend the sessions presided by the respondent believing as they do that the latter was illegally elected. Upon the other hand, the Cuenco group believing itself as possessing the constitutional quorum and not desiring to make any semblance of admission to the contrary, does not find it convenient to compel the attendance of any senator of the Avelino group. Then the question arises—who will decide the conflict between the two groups? This anomalous situation will continue while the conflict remains unsettled, and the conflict will remain unsettled while this Court refuses to intervene. In the meantime, the validity of all the laws, resolutions and other measures which may be passed by the Cuenco group will be opened to doubt because of an alleged lack of quorum in the body which authored them. This doubt may extend, in diverse forms, to the House of Representatives and to the other agencies of the government such as the Auditor General's Office. Thus, a general situation of uncertainty, pregnant with grave dangers, is developing into confusion and chaos with severe harm to the nation. This situation may, to a large extent, be stopped and constitutional processes may be restored in the senate if only this Court, as the guardian of the Constitution, were to pronounce the final word on the constitutional mandate governing the existing conflict between the two groups. And, in my opinion, under the present circumstances, this Court has no other alternative but to meet the challenge of the situation which demands the utmost of judicial temper and judicial statesmanship. As hereinbefore stated, the present crisis in the senate is one that imperatively calls for the intervention of this Court.

## ON LEGALITY TO ELECTION

As to the legality of respondent's election as acting President of the Senate, I firmly believe that although petitioner's adjournment of the session of February 21, 1949, was illegal, such illegality cannot be countered with another illegality. The session wherein respondent was elected as acting President of the Senate was illegal because when Senator Mabanag raised the question of a quorum and the roll was called, only twelve senators were present. In the Philippines there are twenty-four senators, and therefore, the quorum must be thirteen. The authorities on the matter are clear.

"The constitution of our state ordains that a majority of each house shall constitute a quorum. The house of representatives consists of 125 members; 63 is a majority and a quorum. When a majority or quorum are present, the house can do business; not otherwise. A quorum possessed all the powers of the whole body, a majority of which quorum must, of course, govern." (In re Gunn, 50 Kan. 155, 32 p. 470, 476, 19 L. R. A. 519).

"Quorum as used in U. S. C. A. Const. Art. 4, sec. 8, providing that a majority of each house shall constitute a quorum to do business, is for the purposes of the Assembly, not less than the majority of the whole number of which the house may be composed. Vacancies from death, resignation or failure to elect cannot be deducted in ascertaining the quorum." (Opinion of Justices, 12 Pla. 653).

"The general rule is that a quorum is a majority of all the members and a majority of this majority may legislate and do the work of the whole." (State vs. Hillington, 117 N. C. 158, 23 S. E. 250, 251, 252, 30 L. R. A. 532, 53 AmSR 580).

"\* \* \* a majority of each House is necessary to transact business, and a minority cannot transact business, this view being in keeping with the provision of the Constitution permitting a smaller number than a quorum to adjourn from day to day merely." (Earp v. Riley, 40 Okl. 340, 138, p. 164; Ralls vs. Wyand, 40 Okl. 323, 138, p. 158).

"The Constitution provides that 'a majority of each house shall constitute a quorum to do business,' in other words, when a majority are present the House is in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present. All that the Constitution requires is the presence of a majority, and when that majority are present, the power of the House arises." (U. S. vs. Ballin, Joseph and Co., 36 L. ed. 321, 325).

"If all the members of the select body or committee, or if all the agents are assembled, or if all have been duly notified, and the minority refuse, or neglect to meet with the others, a majority of those present may act, provided those present con-

stitute a majority of the whole number. In other words, in such case, a major part of the whole is necessary to constitute a quorum, and a majority of the quorum may act. If the major part withdraw so as to leave no quorum, the power of the minority to act is, in general, considered to cease." (I Dillon, *Mun. Corp.* 4th ed., sec. 238).

Therefore, without prejudice to writing a more extensive opinion, if necessary, I believe that respondent Mariano J. Cuenco has not been legally elected as acting President of the Senate. It is true that respondent Cuenco, in fact, must be the Senate President because he represents the majority of the members now present in Manila, and, at any new session with a quorum, upon the present senatorial alignment, he will be elected to said office. But precisely because he is now the master of the situation, he must win his victory in accordance with the Constitution. It is absolutely essential in the adolescent life of our Republic to insist, strictly and uncompromisingly, on the democratic principles consecrated in our Constitution. By such efforts alone can we insure the future of our political life as a republican form of government under the sovereignty of a Constitution from being a mockery.

#### THE SITUATION

The situation now in this Court is this—there are four members who believe that there was no quorum in respondent's election as against four other members who believe that there was such quorum. Two members declined to render their opinion on the matter because of their refusal to assume jurisdiction. And, one member is absent from the Philippines. Thus, the question of whether or not respondent has been legally elected is, to say the least, doubtful in this Court under the present conditions. This doubt, which taints the validity of all the laws, resolutions and other measures that the Cuenco group has passed and may pass in the future, can easily be dispelled by them by convening a session wherein thirteen senators are present and by reiterating therein all that has been previously done by them. This is a suggestion coming from a humble citizen who is watching with a happy heart the movements of this gallant group of prominent leaders campaigning for a clean and honest government in this dear country of ours.

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By Justice TUASON

I agree with Mr. Justice Briones dissenting opinion, that the twelve senators who elected Senator Cuenco Acting President of the Senate did not constitute a quorum and, consequently, that his election was illegal.

It appears to me that the basis for computing a quorum of the Senate is the number of senators who have been elected and duly qualified and who have not ceased to be senators by death or legal disqualification. If this were not so, what is the standard of computation? No satisfactory, reasonable alternative has been or can be offered.

Absence abroad cannot be a disqualification unless by such absence, under the Constitution, a member of the Senate loses his office, emoluments, and other prerogatives, temporarily or permanently. There is no claim that this happens when a senator leaves the Philippines. If ready availability of the senators' presence at the session be the criterion, then serious illness or being in a remote island with which Manila has no regular means of communication should operate to eliminate the sick or absent member from the counting for the purpose of determining the presence of a majority.

The distinction made between absentees from legislative sessions who are in the Philippines and absentees who are in a foreign country is, to my mind, arbitrary and unreasonable. From both the theoretical and the practical points of view, it has no reason for being. Trips abroad by members of Congress are sometimes found necessary to fulfill their missions. If we test the interpretation by its consequences, its unsoundness and dangers become more apparent. The interpretation would allow any number of legislators, no matter how small, to transact business so long as it is a majority of the legislators present in the country. Nothing in my opinion could have been farther from the minds of the authors of the Constitution than to permit, under any circumstances, less than a majority of the chosen and qualified representatives of the people to approve measures that might vitally affect their lives, their liberty, happiness and property. The necessity of arresting absent members to complete a quorum is too insignificant, compared with the necessity of the attendance of an absolute majority, to make unamenability to arrest a factor for ruling out absentees who are beyond the legislature's process. The Congress is eminently a law-making body and is little concerned with jurisdiction over its members. The power to order arrest is an emergency measure and is rarely resorted to. Viewed in this light, it is doubtful if the authority to arrest could always afford a satisfactory remedy even in the cases of members who were

inside the Philippine territory. This is especially true in the United States of America, after whose form of government ours is patterned and whose territorial possessions extend to the other side of the globe.

This case is easily distinguishable from *Vera vs. Avelino*, G. R. No. L-543, and *Mabanag vs. Lopez Vito*, G. R. No. L-1123.

In those cases the petitions were directed against an action of a recognized Senate exercising authority within its own domain. Here the process sought is to be issued against an appointee of a senate that, it is alleged was not validly constituted to do business because, among other reasons alleged, there was no quorum. The Court is not asked to interfere with an action on a coordinate branch of the government so much as to test the legality of the appointment of the respondent.

Section 1, Rule 68, of the Rules of Court provides:

“An action for the usurpation of office or franchise may be brought in the name of the Republic of the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office or a franchise, or an office in a corporation created by authority of law;

#### EXCEPTIONS

This provision by its terms extends to every office. Its scope does not exclude officers appointed by the legislative branch of the government. Although this Court has no control over either branch of the Congress, it does have the power to ascertain whether or not one who pretends to be its officer is holding his office according to law or the Constitution. Political questions as a bar to jurisdiction can only be raised by the supreme power, by the legislature, and not by one of its creatures. (*Luther vs. Border*, 48 U.S. 7 How. 1, 12 L. ed. 581.) If there were two lesser officers of the Senate appointed by different factions thereof and contesting each other's right to the office, it would not be the Senate but the Court which would be called upon to decide the controversy. There is more reason for the Court to intervene when the office of the President of the Senate is at stake. The interests of the public are being greatly imperiled by the conflicting claims, and a speedy determination of the same is imperatively demanded, in the interest of good government and public order.

Fundamentally this case is analogous to *Attorney General, ex ral. Werts vs. Rogers*, 23 *Lawyers' Reports, Annotated*, 354, to which I am indebted for much of the reasoning adduced in this dissent on the question of this Court's jurisdiction.

By Justice BRIONES

Without prejudice to the publication of a more extended opinion on my vote in this case, I am advancing the following observations:

(1) *This Supreme Court has jurisdiction over the case.*—I reaffirm my position in the case of *Vera V. Avelino*, L-543, and *Mabagnag V. Lopez Vito*, L-1123. The constitutional and legal question herein controverted is not of a purely political nature in the sense that this Court should inhibit itself from deciding it, but one which is perfectly *justiciable*. The question presented is whether the group of senators that elected the respondent as acting president of the Senate had the power to do so. It is alleged and contended that such power did not exist, on the ground that when said group met there was no quorum present in conformity with the provision of the Constitution and the rules of the senate. This question is justiciable and may and should be tried, determined and resolved by this Court, inasmuch as the aggrieved party has come to us for relief. This court cannot refuse in a Pilate-like gesture; it cannot continue the ostrich-like practice of hiding its head in the sands of the desert. The constitutional and legal issue discussed is important, very important. It has direct and most vital repercussions in the life, liberty and property of the citizens. What is litigated in this case is the supreme task of legislation. The subject of the controversy is, therefore, one of the essences of the republic itself. The political struggle is of the least importance; what is essential and important is the juridicial and constitutional substance.

It is most urgent for this Court to assume jurisdiction over this case as the conflict that has arisen in the senate between the two warring political groups has reached proportions of a tremendous national crisis, pregnant with great dangers and menace to the stability of our political institutions, to public order and to the very integral existence of the nation.

#### TYPICAL PRECEDENT

We have a typical precedent in the jurisprudence of the State of New Jersey, United States of America. It is the case of *Werts v. Rogers*, of the year 1894, *Atlantic Reporter*, Vol. 28, page 728, E. J. The similarity is complete. Two senators were also claiming the presidency of the senate, each one claiming legitimacy in himself. There were also two factions, each one pretending to count with real and popular backing. One group was called "*Adrain Senate*" and another group "*Rogers Senate*," after the names of the contending presidents. It was equally argued that the Supreme Court of New Jersey could not take cognizance of the case as it involved a question

highly political and, therefore, not justiciable. The court, however, entertained the case and, through its Chief Justice, the eminent jurist Mr. Heasley, handled down the following categorical pronouncement:

"x x x. That this court has the legal right to entertain jurisdiction in this case, displayed by this record, we have no doubt; and we are further of opinion that it is scarcely possible to conceive of any crisis in public affairs that would more imperatively than the present one call for the intervention of such judicial authority," *supra*, p. 755.)

Aside from the *justiciability* of the matter in dispute, one of the principal grounds invoked by the Supreme Court of New Jersey in assuming jurisdiction over the case was the extreme necessity of deciding a *deadlock* which paralyzed the legislative machinery, affected the stability of the government, and endangered public interests. I ask: Is the same reason of extreme necessity not present in this case? Can there be any doubt that the conflict between the two factions of our senate is seriously affecting public interests? Can there be any doubt that there is constitutional abnormality, seriously worrying everybody and gravely harming tranquility?

(2) *The adjournment of the session by president Avelino was illegal and arbitrary.*—I believe that President Avelino acted illegally and arbitrarily in ordering the adjournment of the session in the face of firm, vigorous and tenacious opposition of some senators adverse to him. In view of this opposition, it was the duty of the Chair to submit to a vote the motion for adjournment presented by Senator Angeles David. Avelino had no right, *motu proprio*, to adjourn the session. It is only when no objection is interposed that the presiding officer as a matter of routine may consider as approved a motion for adjournment. If the power to adjourn a session were not subject to the express will of the majority, it would be a most dangerous weapon in the hands of a despotic and arbitrary president.

The contention that Senator Avelino decreed the adjournment of the session in the exercise of his inherent powers, in view of the fact that he believed that there was imminent danger of disorder and tumult in the session hall, is wholly untenable. The facts of the case do not justify such contention, under the evidence on record. What Senator Avelino should have done was to appease the public and prevent all disorderly attempts. He had all the means to do it. He failed to do it. Indeed, he left the presidential chair in company of the senators of his group. This amounted to a desertion and the senators of the other group had the perfect right to proceed as they did, remaining in the hall to continue the session. This session became an implied resumption—a mere extension of the session declared open by president Avelino with a quorum of 22 members.

## LACK OF QUORUM

(3) *However, the extended session became illegal for lack of quorum.*—It is an established and admitted fact by both parties that in resuming the session there were present the 12 members of the group called “Cuenco Senate” plus three senators of the group called “Avelino Senate”. At this juncture, Senator Mabanag, of the Cuenco group, raised the question of quorum, as a result of which Senator Arranz, then presiding over the session, ordered the roll call. It is also a matter established by the evidence and admitted by the evidence and admitted by both parties that at the start of the roll call, the three senators of the Avelino group left the hall and only the 12 senators of the Cuenco group answered said roll call.

It is thus evident from these facts that there was no quorum, because as the senate is composed of 24 members duly elected and qualified, the quorum for a valid session should be 13 members. Both the federal jurisprudence and that of the States of the American Union abound with decisions firmly laying down the doctrine that the basis for determining the legislative quorum is the total number of the members of each House elected and duly qualified. In the present case, as already stated, this total number is 24. Therefore, the Cuenco group could not validly continue holding session for lack of quorum. In accordance with the Constitution and the rules, the Cuenco group had before it two alternatives: to suspend the session from day to day until the necessary quorum is present; or to compel the attendance of senators of the other group necessary to constitute said quorum, for which purpose it could even order the arrest of the strikers, Art. VI, Sec. 10, par. 2; rules of (Constitution of the Philippines), the Senate, Chapter VI, sections 23 and 24. The result is that all the proceedings held by the Cuenco group in said session were null and illegal.

It is intimated that the change in the wordings of the constitutional provisions regarding *quorum* is significant. As a matter of fact, in the original text of 1935, the following appeared: “A majority of *all the Members* shall constitute a quorum to do business” x x x, while in the amended text of 1940, it is provided: A *majority* of each House shall constitute a quorum to do business” x x x. From this the deduction is sought to be made that the amendment must have meant something, which may be the possibility that less than the total number of the members may serve as the basis for determining the existence of a quorum. The argument, in my opinion, is untenable, if not futile. The authors of the amendment did nothing except to literally copy the wordings of the American Federal Constitution; and we have already seen that this has been construed in the sense that the basis for determining the quorum is the entire

number of the members of each House elected and qualified. Therefore, the change in phraseology, far from denoting a change in the meaning, stabilizes the traditional construction that the basis for determining the quorum is the total number of the members of each House elected and qualified. Furthermore, it is elementary in statutory construction that the same thing may be expressed in diverse ways.

#### REASONABLE BASIS

It has likewise been insinuated, with some wit, that in the case, at bar, the most reasonable basis for the quorum is 23, excluding Senator Confesor who is in America, but including Senator Sotto who, though unable to be present in the session in question on account of serious illness, was, however, in Manila, capable at any moment of being called by the senate. The reason for this opinion is that in order to determine the quorum, a member who is beyond the coercive processes of the House should not be counted. The proposition is equally unacceptable. It is not only judicially unprecedented, but arbitrary and suitable to one's own convenience, because it thereby subjects the matter of quorum, which should be something permanent, to certain eventualities and contingencies. It should be remembered that the constitutional provision and the pertinent rules do not provide any exception. When the law makes no distinction, we should not differentiate.

(4) *What is the remedy.*—There is no doubt that a majority of the senators can reorganize the senate at their pleasure, provided it conforms to the standards established by the constitution, the laws and the rules. In the present case the Cuenco group which seemingly has the majority, at least up to now, possesses the constitutional and legal means for effecting a reorganization. It may call a session and compel the attendance of the senators necessary to constitute a quorum, by ordering the arrest, if necessary, of said senators, in the supposition of course, that Senator Avelino and his group insist in boycotting the sessions of the senate in order to prevent the existence of the quorum. If the Avelino group, however, voluntarily attends the session, the two groups will then be able to peacefully restore the constitutional normalcy and to proceed with the reorganization desired and ordered by the majority.

Until this is done, Senator Avelino is technically the president of the senate. While it is true that Avelino committed a highly arbitrary act by ordering the adjournment of the session without the

right and power to do so, the same does not warrant the commission of another arbitrariness: that of deposing him by unconstitutional, illegal and irregular methods. The motives of Avelino and his adversaries are of no interest to us, nor do they fall within our jurisdiction; the only thing that concern us is their juridical repercussions.

It is of paramount importance, especially during this infancy of the republic, that we rigidly and implacably maintain the integrity of the Constitution and the procedure prescribed therein. It is only then that we could avoid the blind and uncontrolled display of personal and political passions and all their lamentable consequences. At all cost we should prevent the formation of a political, social or moral clime conducive to *cuarteladas*, uprising, *coup d'main* and *coup d'etat*,—which characterize the hazardous history of the so-called “banana republics.” A 19th Brumaire can only be prevented by strictly and uncompromisingly compelling the observance of the constitution and the laws and rules implementing it.

I, therefore, vote for the granting of the petition.

#### RESOLUTION OF THE SUPREME COURT

March 14, 1949

Considering the motion for reconsideration filed by petitioner in case G. R. No. L-2821, Jose Avelino vs. Mariano J. Cuenco, the Court, without prejudice to writing later an extended opinion, has resolved, by a majority of seven, to assume jurisdiction over the case in the light of subsequent events which justify its intervention; and, partly for the reasons stated in the first resolution of this Court and partly upon the grounds stated by Mr. Justice Feria, Mr. Justice Perfecto, and Mr. Justice Briones in their separate opinions, to declare that there was a quorum at the session where respondent Mariano J. Cuenco was elected acting Senate President.

The Chief Justice agrees with the result of the majority's pronouncement on the quorum upon the ground that, under the peculiar circumstances of the case, the constitutional requirement in that regard has become a mere formalism, it appearing from the evidence that any new session with a quorum would result in the respondent's election as Senate President, and that the Cuenco group, taking cue from the dissenting opinions, has been trying to satisfy such formalism by issuing compulsory processes against senators of the Avelino group, but to no avail, because of the latter's persistent efforts to block all avenues to constitutional processes. For this reason, he believes that the Cuenco group has done enough to satisfy the requirements of the Constitution and that the majority's ruling

is in conformity with substantial justice and with the requirements of public interest.

The judgment of the Court is, therefore, that respondent Mariano J. Cuenco has been legally elected as Senate President and the petition is dismissed, with costs against petitioner.

Mr. Justice Paras concurs in the result. Mr. Justice Bengzon dissents on the question of jurisdiction but concurs on the question of quorum.

Mr. Justice Tuason concurs on the question of jurisdiction but dissents on that of quorum.

Mr. Justice Montemayor dissents on the question of jurisdiction and reserves his vote on the question of quorum.

Mr. Justice Reyes reserves the right to express the reasons for his vote.

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