RECENT CASES

Right of Defendant to Counsel de Officio

The accused were charged of robbery with rape. The complaint was filed against them on February 16, 1946 before the Justice of the Peace Court of Calauan, Laguna where the crime was committed. At the preliminary investigation the defendants were represented by Attorney Damaso Tengco. The fiscal filed the information in the Court of First instance on August 31, 1946. The arraignment was held on October 8, 1946 and the court set the trial for October 23, 1946, the court advising the parties of its desire to proceed with the case without fail on that day.

On October 23, 1946, when the case was called for trial, the defendants appeared without counsel. The Judge appointed Attorney De Leon as counsel de officio to represent the defendants. The attorney conferred with his new clients after which he remarked, "I have talked to the accused and told them to get their attorney because I am always busy. That is why I am not prepared for the trial." The Judge ruled that the trial should proceed. Witnesses were presented for the prosecution and the counsel de officio cross-examined them. When the session was resumed after the court granted two hours recess the defendants testified and were in turn cross-examined by the fiscal.

The defendants were found guilty of the charge. They appealed arguing as an error the fact that the Judge insisted in continuing the trial even when the accused appeared without counsel.

The Supreme Court arrived at the following conclusion:

"As everything appears to have been normally conducted, we cannot say that under the circumstances, there was judicial error . . . It was therefore no abuse of discretion for His Honor to insist on holding the trial, the accused having had enough time to prepare for it, had the benefit of counsel's assistance and apparently were bent on delaying the termination of the proceedings, they having on a previous occasion failed to show up and were consequently averted by the court's order. Anyway, it was not shown in what manner their representation by counsel de officio had substantially impaired their defense." (People v. Silverio et al, G. R. No. L-1228, May 28, 1948).

The question raised is whether the defendants were deprived of their right to a fair trial under the stated circumstances.

The Rules of Court provide under Rule 111 entitled "Rights of the Defendant": "Sec. 1.—Rights of the defendant at the trial—In all criminal prosecutions the defendant shall be entitled: a) To be present and defend in person and by attorney at every stage of the proceedings, that is from the arraignment to the promulgation of the judgment."

The right to defend with assistance of counsel has been regarded as perhaps the privilege most important to the person accused of crime.[1] To carry this principle into effect the Rules of Court aside from above quoted section further provides for the sending for a lawyer by the defendant during the preliminary investigation,[2] the duty of the court to inform the defendant of his right to have attorney at the arraignment,[3] and in case of appeal, the appointment of attorney de officio for the defendant by the court.[4]

However, among the above provisions the law imposes on the court only one duty which must be affirmatively performed by it unless waived.[5] That duty is imposed by Sec. 3 of Rule 112 which states that: "If the defendant appears without attorney, he must be informed by the court that it is his right to have attorney before being arraigned and must be asked if he desires the aid of attorney. If he desires and is unable to employ attorney, the court must assign attorney de officio to defend him. A reasonable time must be allowed for procuring attorney." This point is clearly illustrated by the case of People v. Binayo (35 Phil. 23), where the defendant confessed to his commission of the crime charged against him after which the court asked him questions which he answered, the defendant appealed from such judgment alleging that he should have been advised by attorney before answering the question at trial. The Supreme Court was of the following opinion: "Sec. 17 of the Code of Criminal Procedure (now Rule 112, Sec. 3) relates to arraignment of the accused after the complaint or information has been filed against him but before trial . . . the appearance here of the defendant was not an arraignment but the trial . . . at the trial the defendant is entitled to appear by himself or by counsel at every stage of the proceedings . . . The Code of Criminal Procedure makes a sharp distinction between arraignment and trial. The court has the duty under Sec. 17 but it has no such duty with regards the right of the accused at trial in which the duty to act in the first

[1] Cooley, *Constitutional Limitation*, 8th Ed., p. 696.
[2] Rule 108, Sec. 12.
[3] Rule 112, Sec. 3.
[4] Rule 120, Sec. 2.
[5] U. S. v. Gimeno, 1 Phil. 236; U. S. Palisoc, 4 Phil. 207; U. S. v. Ramirez, 26 Phil. 616.

instance is not laid on the court. The defendant must himself invoke his right at the trial.

The above case therefore distinguished the duty of the court under Rule 112, Sec. 3 from the personal right and duty of the defendant to safeguard his right to representation, which though very important, can be waived[6] by the defendant. In the case of People v. Go Leng[7] the defendant was charged and convicted by the Court of First Instance for the possession of opium. He appealed on the ground that the court erred in obliging him to stand trial without the assistance of an attorney by refusing to allow his request for time to procure such counsel. It appeared that at the trial of the case the defendant appeared without counsel and upon being asked by the court whether he could afford to employ a lawyer replied in the affirmative, but stated that he could not come into agreement with the lawyer as to the amount he would pay the latter for his services. The court was of the opinion that the reason of the defendant was not sufficient cause for postponement and proceeded with the trial. The Supreme Court held that accused persons are undoubtedly entitled to appoint an attorney to defend them at trial or to have one appointed de officio, should they ask for one. But it is a right which they are perfectly entitled to waive. And they may defend themselves in person and which the law recognizes, as it could not but do their right—to defend themselves in person without the assistance of counsel. It is understood that they waive their right to be assisted by counsel when they do not appoint (or request) one but voluntarily submit to trial and specially when they actually exercise therein the right of defense by cross-examining the witnesses for the prosecution and by introducing evidence in their behalf, as was done in the present case.

When the court asks the defendant if he desires counsel, offering to furnish him therewith and he declines[8] or where it assigns counsel to him whose services he refuses to avail of, the trial may proceed without his having counsel, for the court has no power to force counsel upon him.[9] The constitutional guarantee to be represented by counsel does not confer the right upon the accused to compel the court to assign him such counsel as he may choose.[10]

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[6] U. S. v. Go Leng, 21 Phil. 426; U. S. v. Kilayco, 31 Phil. 371; U. S. v. Escalante, 36 Phil. 743.

[7] U. S. v. Go Leng, 21 Phil. 426.

[8] Stokes v. State, 73 Ga. 816.

[9] State v. Moore, 121 Mo. 514; 26 SW 345; 42 Am. St. Rep. 542; Reg. v. Yscuado, 6 Cox C. C. 386.

[10] Fambles v. State, 97 Ga. 625; 26 SE 363; Baker v. State, 86 Wis. 474, 56 NW 1088.

Let us now look at the question of lack of preparation for the trial. The Rules of Court provides in Sec. 7, Rule 114: *"Time to prepare for trial*—After a plea of not guilty, except when the case is an appeal from the justice of the peace, the defendant is entitled to at least two days to prepare for trial except when the court for good cause shown shall allow further time.

The provision as to the two-day period is mandatory but the court is not bound to impose it unless claimed by the accused.[11] If the accused does not claim such right, it is waived.[12]

In the case of People v. Santos, 4 Phil. 419, the lower court denied the petition of the defendant for the two-day preparation but the trial was not held until eleven days thereafter, at which the defendant presented his witnesses without renewing his petition. The Supreme Court held that such was not a prejudicial error.

In the present case of People v. Silverio there can be no question as to the ample time had by defendants to prepare their case, the arraignment having taken place October 8, 1946 and the trial set for October 23, 1946.

The provisions of law and the cases cited show that in no way was the right of the defendants to fair trial infringed upon.

—Natividad V. Ocampo

[11] People v. Kagui Malasugui, 63 Phil. 221.
[12] People v. Cruz, 54 Phil. 24; People v. Moreno, G. R. No. L-64, October 28, 1946.

* * *

Laws too gentle are seldom obeyed; too severe, seldom executed.

—FRANKLIN

JOSE AVELINO, *Petitioner,* vs. MARIANO J. CUENCO, *Respondent* *

FERIA, F., *J.*, concurring:

In the case of Vera et al. vs. Avelino, et al., G. R. No. L-543, the principal question raised was whether this Supreme Court had jurisdiction to set aside the Pendatun resolution ordering that the petitioners Vera, Diokno and Romero shall not be sworn to nor seated as members of the Senate and compel the respondents to permit them to occupy their seat on the ground that the respondents had no power to pass said resolution, because it was contrary to the provisions of Sec. 11, Article VI, of the Constitution, which created the Electoral Tribunal for the Senate as well as for the House of Representatives and provided that said Tribunal shall be sole judge of all contests relating to the election returns and qualifications of their respective members. The respondents Avelino, et al., who were represented by Senator Vicente Francisco and the Solicitor General impugned the jurisdiction of this Court to take cognizance of said case on the ground that the question therein incurred was a political question and the petitioners Vera et al., who were represented by Attorney Jose W. Diokno, who is now one of the attorneys for respondents, who now contends that this Supreme Court has no jurisdiction over the present case, then maintained that this Court had jurisdiction.

And in the case of Mabanag et al. vs. Jose Lopez Vito et al., G. R. No. L-1123, the question involved was whether it was within the jurisdiction of this Court to take cognizance of the case and prohibit the respondents from enforcing "the Congressional Resolutions of both Houses proposing an amendment to the Constitution of the Philippines to be appended as an ordinance thereto," granting certain rights to the citizens of the United States of America in the Philippines, on the ground that it was null and void because it was not passed by the vote of three-fourths of all the members of the Senate and House of Representatives, voting separately, as required by Sec. 1, Article XV, of the Constitution, since if the Members of Congress who were not allowed to take part had been counted the affirmative votes in favor of the proposed amendment would have been short of the necessary three-fourths vote in either branch of Congress. The petitioners Mabanag et al. contended that the Court had jurisdiction, and the respondents maintained the contrary on

* This is a continuation from the last issue.

the ground that the question involved was a political one and within the exclusive province of the Legislature.

The theory of Separation of Powers as evolved by the Courts of last resort from the State Constitutions of the United States of America, after which our own is patterned, has given rise to the distinction between justiceable questions which fall within the province of the judiciary, and political questions which are not within the jurisdiction of the judiciary and are to be decided, under the Constitution, by the People in their sovereign capacity or in regard to which full discretionary authority has been delegated to the legislative branch of the government, except to the extent that the power to deal with such question has been conferred upon the court by expressed or statutory provision. Although it is difficult to define a political question as contradistinguished from a justiceable one, it has been generally held that the first involves political rights which consist in the power to participate, directly or indirectly in the establishment or management of the government, while justiceable questions are those which affect civil, personal or property rights accorded to every member of the community or nation.

Under such theory of Separation of Powers, the judicial Supremacy is the power of judicial review in actual and appropriate cases and controversies that present justiceable issues, which fall within the jurisdiction or power allocated to the judiciary; but when the issue is a political one which comes within the exclusive sphere of the legislative or executive Department of the Government to decide the judicial department or Supreme Court has no power to determine whenever or not the act of the Legislature or Chief Executive is against the Constitution. What determines the jurisdiction of the courts is the issue involved, and not the law or constitutional provision which may be applied. Divorced from the remedy sought, the declaration of this Court on the matter of constitutionality or unconstitutionality of a legislative or executive act would be a mere advisory opinion, without a coercive force.

Relying on the ruling laid down in Severino vs. Governor General, 16 Phil. 366; Abueva vs. Wood 45 Phil. 612; and Alejandrino vs. Quezon, 46 Phil. 83, the Supreme Court upheld the contention of said respondents in both cases that the question involved was a political question and therefore this Court had no jurisdiction. I was one of the three Justices who held that this Court had jurisdiction, and dissented from the decision of the majority.

When the present case was first submitted to us, I concurred with the majority, in view of the ruling of the Court in said two cases, which constitutes a precedent which is applicable *a fortiori*

to the present case and must, therefore, be followed by virtue of the doctrine or maxim of *stare decisis*, and in order to escape the criticism voiced by Lord Bryce in American Commonwealth when he said that "The Supreme Court has changed its color, i.e., its temper and tendencies, from time to time according to the political proclivities of the men who composed it x x x. Their action flowed naturally from the habits of thought they had formed before their accession to the bench and from the sympathy they could not but feel for the doctrine on whose behalf they had contended." (*The Annals of the American Academy of Political and Social Science*, May, 1936, p. 50.)

Now that the petitioner, who obtained a ruling favorable to his contention in the Vera-Avelino case *supra*, insists in his motion for reconsideration that this Court assume jurisdiction and decide whether or not there was quorum in the session of the Senate of February 21, 1948, and is willing to abide by the decision of this Court (notwithstanding the aforementioned precedent), and several of the Justices, who have held before that this Supreme Court had no jurisdiction, now upheld the jurisdiction of this Court, I gladly change my vote and concur with the majority in that this Court has jurisdiction over cases like the present in accordance with my stand in the above mentioned cases, so as to establish in this country the judicial supremacy, with the Supreme Court as the final arbiter, to see that no one branch or agency of the government transcends the Constitution, not only in justiceable but political questions as well.

But I maintain my opinion and vote in the resolution sought to be reconsidered, that there was a quorum in the session of the Senate of February 21, 1949, for the following reasons:

Art. 3 (4) Title VI of the Constitution of 1935 provided that "the majority of *all the members* of the National Assembly constitute a quorum to do business" and the fact that said provision was amended in the Constitution of 1939, so as to read "a majority of each House shall constitute a quorum to do business," shows the intention of the framers of the Constitution to base the majority, not on the number fixed or provided for in the Constitution, but on actual membership or incumbents, and this must be limited to actual members who are not incapacitated to discharge their duties by reason of death, incapacity, or absence from the jurisdiction of the house or for other causes which make attendance of the member concerned impossible, even through coercive process which each house is empowered to issue to compel its members to attend the session in order to constitute a quorum. That the amendment was intentional or made for some purpose, and not a mere oversight or

for considering the use of the words "of all the members" as unnecessary, is evidenced by that fact that Sec. 5 (5) Title VI of the original Constitution which required "concurrence of two-thirds of the members of the National Assembly to expel a member" was amended by Sec. 10 (3) Article VI of the present Constitution, so as to require "the concurrence of two-thirds of *all the members* of each House." Therefore, as Senator Confesor was in the United States and absent from the jurisdiction of the Senate, the actual members of the Senate at its session of February 21, 1958, were twenty-three (23) and therefore 12 constituted a majority.

This conclusion is in consonance with the legislative and judicial precedents. In the Resolution of both Houses proposing an amendment of the Constitution of the Philippines to be appended to the Constitution, granting parity rights to American citizens in the Philippines, out of which the case of Mabanag vs. Lopez, *supra* arose, both Houses of Congress in computing the three-fourths of all the Members of the Senate and the House of Representatives, voting separately, required by Sec. 1, Article XV of the Constitution, the three-fourths of all the members was based, not on the number fixed or provided for in the Constitution, but on the actual members who have qualified or were not disqualified. And in the case of People vs. Fuentes, 46 Phil. 22, the provision of Sec. 1, subsection 2, of Act No. 3104, which required unanimity of vote of the Supreme Court in imposing death penalty excepted from the count those members of the Court who were legally disqualified from the case, this Court held that the absence of Chief Justice Avanceña, authorized by resolution of the Court, was a legal disqualification, and his vote was not necessary in the determination of the unanimity of the decision imposing death penalty.

* * *

OPINION OF JUSTICE PERFECTO

The problems of democracy must be faced not in the abstract but as practical questions, as part of the infinitely motley aspects of human life. They cannot be considered as scientific propositions or hypothesis independently from the actual workings of the unpredictable flights of the spirit which seem to elude the known laws of the external world. Experience appears to be the only reliable guide in judging human conduct. Birth and death rates and incidence of illness are compiled in statistics for the study and determination of human behavior, and statistics are one of the means by which the teachings of experience may render their quota of contribution in finding the courses leading to the individual well-being and collective happiness.

The way this case has been disposed of by the Supreme Court, upon the evidence coming from many quarters and sectors, is provenly far from being conducive to democratic eudaemonia. We intended to settle the controversy between petitioner and respondent, but actually we left hanging in the air the important and, indeed, vital questions. They posed before us in quest of enlightenment and reasonable and just decision. We left the people confused and the country in a quandary.

We can take judicial notice that legislative work has been at a standstill, the normal and ordinary functioning of the Senate has been hampered by the non-attendance to sessions of about one-half of the members, warrants of arrest have been issued, openly defied, and remained unexecuted like mere scraps of paper, notwithstanding the fact that the persons to be arrested are prominent persons with well-known addresses and residences and have been in daily contact with news reporters and photographers. Force and mockery have been interspersed with actions and movements provoking conflicts which invite bloodshed.

It is highly complimentary to our Republic and to our people that, notwithstanding the overflow of political passions and the irreconcilable attitude of warring factions, enough self-restraint has been shown to avoid any clash of forces. Indeed there is no denying that the situation, as obtaining in the upper chamber of Congress, is highly explosive. It had echoed in the House of Representatives. It has already involved the President of the Philippines. The situation has created a veritable national crisis, and it is apparent that solution cannot be expected from any quarter other than this Supreme Court, upon which the hopes of the people for an effective settlement are pinned.

The Avelino group, composed of eleven senators, almost one-half of the entire body, are unanimous in belief that this Court should take jurisdiction of the matter and decide the merits of the case one way or another, and they are committed to abide by the decision regardless of whether they believe it to be right or mistaken. Among the members of the so-called Cuenco group, there are several senators who in a not remote past (Sec. Vera vs. Avelino, L-543 and Mabanag vs. Lopez Vito, L-1123) have shown their conviction that in cases analogous to the present the Supreme Court has and should exercise jurisdiction. If we include the former attitude of the senator who is at present abroad, we will find out that there are in all eighteen (18) senators who at one time or another recognized the jurisdiction of the Supreme Court and have pinned and are pining their hopes on the Supreme Court for the settlement of such momentous contro-

sies as the one now challenging our judicial statesmanship, our patriotism, our faith in democracy, the role of this Court as the last bulwark of the Constitution.

In the House of Representatives unmistakable statements have been made supporting the stand of the eighteen (18) senators, or of three-fourths (3/4) of the entire Upper Chamber, in support of the jurisdiction of the Supreme Court and of the contention that we should decide this case on the merits.

Judicial "hands off" policy is, in effect, a showing of official inferiority complex. Consequently, like its parallel in the psychological field, it is premised on notions of reality fundamentally wrong. It is an upshot of distorted past experience, warping the mind so as to become unable to have a healthy appraisal of reality in its true form.

It is futile to invoke precedents in support of such an abnormal judicial abdication. The decision in the Alejandrino vs. Quezon, 46 Phil. 63, is absolutely devoid of any authority. It was rendered by a colonial Supreme Court to suit the imperialistic policies of the masters. That explains its glaring inconsistencies.

Also frivolous is to invoke the decisions in the Vera vs. Avelino, C. R. No. L-543, and Mabanag vs. Lopez Vito, 43 O. G. 2079, cases, both patterned after the colonial philosophy pervading the decision in Alejandrino vs. Quezon, 46 Phil. 63. Judicial emancipation must not lag behind the political emancipation of our Republic. The judiciary ought to ripen into maturity if it has to be true to its role as spokesman of the collective conscience, of the conscience of humanity.

For the Supreme Court to refuse to assume jurisdiction in this case is to violate the Constitution. Refusal to exercise the judicial power vested in it is to transgress the fundamental law. This case raises vital constitutional questions which no one can settle or decide if this Court should refuse to decide them. It would be the saddest commentary to the wisdom, foresight and statesmanship of our Constitutional Convention to have drafted a document leaving such a glaring hiatus in the organization of Philippine democracy if it failed to entrust to the Supreme Court the authority to decide such constitutional questions.

Our refusal to exercise jurisdiction in this case is as unjustifiable as the refusal of senators on strike to attend the sessions of the Senate and to perform their duties. A senatorial walkout defeats the legislative power vested by the Constitution in Congress. Judicial walkouts are even more harmful than a laborer's strike or a legislative impasse. Society may go on normally while laborers temporarily stop to work. Society may not be disrupted by delay

in the legislative machinery. But society is managed with dissolution in the absence of an effective administration of justice. Anarchy and chaos are its alternatives.

There is nothing so subversive as official abdication or walkout by the highest organs and officers of government. If they should fail to perform their functions and duties, what is the use for minor officials and employees to perform theirs? The constitutional question of quorum should not be left unanswered.

Respondent's theory that twelve (12) senators constitute the majority required for the Senate quorum is absolutely unacceptable. The verbal changes made in the constitutional amendment, upon the creation of Congress to replace the National Assembly have not affected the substance of the constitutional concept of quorum in both the original and amended contents. The words "all the members" used in the original, for the determination of the quorum of the National Assembly, have been eliminated in the amendment, as regards the houses of Congress, because they were a mere surplusage. The writer of this opinion, as Member of the Second National Assembly and in his capacity as Chairman of the Committee on Third Reading, was the one who proposed the elimination of said surplusage, because "majority of each House" can mean only the majority of the members thereof, without excluding anyone, that is, of all the members.

The word majority is a mathematical word. It has, as such, a precise and exact mathematical meaning. A majority means more than one-half (1/2). It can never be identified with one-half (1/2) or less than one-half (1/2). It involves a comparative idea in which the antithesis between more and less is etched in the background of reality as a metaphysical absolute as much as the antithesis of all opposites, and in the same way that the affirmative cannot be confused with the negative, the creation with nothingness, existence with non-existence, truth with falsehood.

The Senate is composed of twenty-four (24) senators. The majority of said senators cannot be less than thirteen (13). Twelve (12) do not constitute a majority in a group composed of twenty-four (24) units. It is so evident that it is not necessary to have the mathematical genius of Pythagoras, Euclid, Newton and Pascal to see what our elementary school students can immediately perceive

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a majority part of the two numbers combined. The five (5) fingers of one hand cannot be the majority of the combined ten (10) fingers

of the two hands. Majority is incompatible with equality. It implies the idea of superiority.

Majority is a derivative of major which, in its turn, is a derivative of the Latin "magnus," meaning great. Majority means the greater of two numbers that are regarded as parts of a total: the number greater than half. It implies a whole of which constitutes the greater part or portion. It presupposes the existence of a total and, in the present case, the total number of twenty-four (24) senators composing the Senate.

The above pronouncements notwithstanding, we are now inclined to conclude that for the purpose of choosing respondent merely as Acting President of the Senate, as an emergency measure to fill the vacuum created by petitioner's desertion of the office of presiding officer by his walkout in the session of February 21, 1949, the presence of the twelve (12) senators was enough quorum.

The Constitution provides:

> "(2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties as such House may provide." (Sec. 10, Art. VI).

The "smaller" referred to in the above provision has to act collectively and cannot act as a collective body to perform the functions specially vested in it by the Constitution unless presided by one among their number. The collective body constituted by said "smaller number" has to take measures to "compel the attendance of absent members in such manner and under such penalties as such House may provide," so as to avoid disruption in the functions of the respective legislative chamber. Said "smaller number" may be twelve or even less than twelve senators to constitute a quorum for the election of a temporary or acting president, who will have to act until normalcy is restored.

As events have developed after the decision in this case has been rendered on March 4, 1949, the picture of petitioner's attitude has acquired clearer and more definite form, and that picture bring us to the conclusion that this case turned into a moot one.

At the hearing of this case for the reception of evidence before Mr. Justice Bengzon, Senator Mariano Jesus Cuenco, the respondent, on cross-examination by Senator Vicente J. Francisco, counsel for petitioner, manifested that he was looking for an opportunity to renounce the position of Acting President of the Senate, and that if Senator Jose Avelino, the petitioner, should attend the session

of the Senate and insist on claiming the presidency thereof, he, the respondent, would allow petitioner to preside over the sessions. He would only make of record his protest, and never report to force or violence to stop petitioner from presiding over said sessions.

The last statement as to allowing petitioner to preside over the sessions was made by respondent under oath twice, and petitioner, although he refused to attend the hearings of this case, so much so that, instead of testifying, he just signed an affidavit which, under the rules of procedure, is inadmissible as incompetent and is as valueless as an empty gesture, could not fail to learn about respondent's testimony, because it was given publicly, it is recorded in the transcript, and petitioner's counsel. Senator Francisco, would certainly not have failed to inform him about it.

Notwithstanding respondent's testimony, petitioner failed to take advantage of it and continues to refuse to attend the sessions of the Senate since he and his group of senators have walked out from the historic Monday session of February 21, 1949.

If petitioner is sincere in his desire of presiding over the sessions of the Senate, for which reason he has sought the help of the Supreme Court why has he failed to take advantage of the commitment made under oath by respondent since February 26, 1949? Why has he, since then, been not only failing but refusing to attend the sessions and preside over them? Why is it that petitioner and his group of senators have given occasion in fact, compelled the senators of the Cuenco group to issue warrants of arrest to remedy the lack of quorum that has been hampering the sessions of the Senate? Why is it that the Senate sergeant-at-arms, his subordinates and the peace officers helping him, have to be hunting for the senators of the Avelino group in a, so far, fruitless if not farcical endeavor to compel them to attend the sessions?

The events that have been unfolding before our eyes, played up everyday in screaming headlines in all newspapers and of which, by their very nature, we cannot fail to take judicial notice, considered, weighed and analyzed in relation with the happenings in the Friday and Monday sessions, February 18 and 21, 1949, have driven into our mind the conviction that, although petitioner would hold fast to the authority, powers and prestige which command the position of President of the Senate, he actually has no earnest desire to preside over the sessions of the Senate, the most characteristic and important function of President of the Senate.

His refusal to attend the sessions notwithstanding respondent's commitment to allow him to preside over them, can and should

logically be interpreted as an abandonment which entails forfeiture of office. (Santiago vs. Agustin, 46 Phil. 14; Ortiz vs. De Guzman, 49 Phil. 371; 46 Corpus Juris, p. 980-981; Wilkinson vs. City of Birmingham, 68 So. 999; 43 American Jurisprudence, p. 27.)

What are petitioner's reasons for refusing to attend the Senate sessions? What are his group's reasons? They say that they want a square decision on the merits of this case, for which reason the motion for reconsideration has been filed. Although we believe that the Supreme Court failed to perform its official duty in refusing, by majority vote, to exercise jurisdiction in this case, and the inconsistency in the position taken by some Members of the majority has only increased public bewilderment, there are strong grounds to conclude that there are other stronger reasons for petitioner and his group to sabotage the sessions of the Senate.

If this Court had decided this case as the four dissenters would have it there cannot be any doubt that the Senate impasse would have been settled many days ago and, with it, the present national crisis hampering and harmstringing the legislative machinery.

The gravity of the situation cannot be gainsaid. The showings of open defiance to warrants of arrest are highly demoralizing. People are asking and wondering if senators are placed above the law that they can simply ignore warrants of arrests and despite the authority of the officers entrusted with the execution. Threats of violence pervade the air. Congress is neglecting the public interests that demand remedial legislation. The present state of confusions, of alarm, of bewilderment, of strife would have ended if, for the reasons we have stated in our dissenting opinion, the Supreme Court have ordered petitioner's reposition.

Once petitioner had been recognized to continue to be the President of the Senate he would certainly have attended the Senate sessions to preside over them. Then the sessions with senators of the Avelino group attending would have been held with the constitutional quorum. The twelve senators of the Cuenco group would have the opportunity of voting solidly to ratify or to reenact all the disputed actuations of the rump session of February 21, 1949, and there is no doubt that they would have succeeded in ousting petitioner and electing respondent to the position of President of the Senate.

Everything then would have followed the normal course. With the presence of a clear and unquestionable quorum, petitioner and his followers would have no ground for any complaint, and respondent could have assumed the Senate's presidency without any hitch.

Of course, petitioner and the senators of his group might have resorted again to the same strategy, by staging the same walkout with which they divested of quorum the rump session of February 21, 1949, but it is not probable that they would have taken the same course of action after this Court, almost unanimously declared that petitioner's action in adjourning the session on February 21, 1949, was arbitrary and illegal. At any rate, the Senators of the Cuenco group would have been by then well prepared to have orders of arrest ready for immediate execution before the striking senators could leave the building housing the session hall.

The abnormal situation in the Senate must be stopped at once. Legislation must go on. The serious charges filed or may be filed against petitioner respondent and other senators demand imperatively investigation and action to acquit the innocent and to punish the guilty ones. Public interest cannot demand less.

Under such circumstances, petitioner has lost all title to claim the position in controversy. This result will not legally or practically close any door for him to again seek the position by attending the sessions of the Senate and by securing a majority that would support him in his bid.

The motion for reconsideration should be denied.

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It is always in season for old men to learn.

—AESCHYLUS