

RECENT DOCUMENTS

Ocampo *et al.* v. The Secretary of Justice *et al.* G.R. No. L-7910 (1955)*

Excerpts from the minutes of Jan. 18, 1955

In Ocampo *et al.* vs. The Secretary of Justice *et al.*, G. R. No. L-7910, the petition was denied, without costs, due to insufficient votes to invalidate section 3 of Republic Act No. 1186.

Chief Justice Parás and Justices Padilla, Reyes (A), and Labrador voted to uphold that particular section;

Justices Pablo, Bengzon, Montemayor, Jugo, Bautista, Concepcion and Reyes, J.B.L., believe it is unconstitutional.

The opinions follow:

PARAS, C.J.:

Under the Judiciary Act of 1948, Republic Act No. 296, the judicial function in Courts of First Instance was vested in District Judges, Judges-at-Large and Cadastral Judges. Sixteen Judicial Districts were constituted, and seventy-four District Judges were provided and distributed thereover in the proportion fixed in the Act. Aside from the seventy-four District Judges, section 53 of the Act provided for the appointment of "eighteen Judges-at-Large and fifteen Cadastral Judges who shall not be assigned permanently to any judicial district and who shall render duty in such district or province as may, from time to time, be designated by the Department Head." The petitioners were duly appointed and had qualified under said section 53, four as Judges-at-Large and six as Cadastral Judges.

Under Republic Act No. 1186, which took effect on June 19, 1954, several provisions of the Judiciary Act of 1948 were amended. Now, the judicial function in the Court of First Instance is vested in District Judges; and although the number of Judicial Districts is maintained, the number of District Judges has been increased to 114. Section 3 of Republic Act No. 1186, provides that "all the existing positions of Judges-at-Large and Cadastral Judges are abolished, and section fifty-three of Republic Act Numbered Two Hundred and Ninety-six is hereby repealed." Shortly after the effectivity of Republic Act No. 1186, the Secretary of Justice informed the petitioners that they had ceased as Judges-at-Large and Cadastral Judges. The petitioners have filed the present petition for declaratory relief and/or mandamus, for a judicial declaration that section 3 of Republic Act No. 1186 is unconstitutional and void, that the respective positions and offices of the petitioners under

* Motion for reconsideration subsequently dismissed in a resolution of the Supreme Court of February 16, 1955.

the Judiciary Act of 1948 still exists, and that they are entitled to exercise the powers and functions of said offices; and for a directive against the Secretary of Justice to permit the petitioners to continue in the exercise of said powers and functions, and against the Chief Accounting Officer and Judicial Officer of the Department of Justice to pay the petitioners their corresponding compensation beginning June 20, 1954.

Section 1 of Article VIII of the Constitution provides that "the judicial power shall be vested in the Supreme Court and in such inferior courts as may be established by law," and section 9 of the same Article provides that "the Members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of 70 years, or become incapacitated to discharge the duties of their office." The power of Congress under section 1 to organize, reorganize and even abolish courts inferior to the Supreme Court, is conceded; and the contention advanced on behalf of the petitioners is merely that such power is restricted by and may be reconciled with section 9 in the sense that they should be allowed to continue holding their offices during good behavior, until they reach the age of seventy years or become incapacitated, notwithstanding the reorganization effected under Republic Act No. 1186 and the express abolition of their positions by section 3 thereof.

In this case we have to assume, both from the explanatory note of the basic Bill and from the sponsorship speeches, that the main objective of Republic Act No. 1186 is to vest the judicial function of Courts of First Instance in District Judges, eliminating Judges-at-Large and Cadastral Judges, the creation of whose positions (by Republic Act No. 296, section 53), as Mr. Justice Padilla says in a separate opinion, offends against the constitutional mandate that no judge appointed for a particular district shall be transferred to another district without the approval of the Supreme Court. For under said Republic Act No. 296, those judges could be assigned by the Secretary of Justice to any Judicial District,—a practice undoubtedly allowing, if it had not already allowed, the designation of any of them to try specific cases with perhaps indicated results. Indeed, the present administration is to be commended for thus totally doing away with the system of "rigodon de jueces", which under the former law it could have maintained to its obvious advantage. It is very significant that not a single District Judge has been ceased out. We cannot accept the insinuation that the petitioners have been purposely removed or legislated out, because the isolated personal opinion expressed by one or two members of Congress that undesirable judges must be weeded out, is not controlling and, as already stated, all positions of Judges-at-Large and Cadastral Judges, and not merely those held by the petitioners, were abolished. If petitioners were not, after the abolition of their posts, retained in the judiciary, like the others by giving them appointment as District Judges,

which involves a promotion to positions of higher category, that is not attributable to Republic Act No. 1186, for petitioners are in fact casualties of the legitimate exercise by the President of his prerogative appointment. Moreover, if the petitioners were intentionally ceased out for being "undesirable", no provision for the payment of any gratuity would have been provided, because removal for cause is never rewarded.

It is argued for the petitioners that Republic Act No. 1186 has not abolished any Court of First Instance and, on the contrary, it has increased the number of District Judges. This is followed by the reminder that in American States where the legislative power to abolish a judgeship was sustained, the corresponding court was also abolished. The flaw of this argument lies in the fact that none of the petitioners was a District Judge presiding over a District Court, and they were all only occupying the positions of either Judge-at-Large or Cadastral Judge in virtue of section 53 of the Judiciary Act of 1948, which positions were all abolished and which section was repealed expressly by Republic Act No. 1186; hence it was no longer necessary to abolish any court. It is not amiss to recall that the position of District Judge has heretofore always been considered as distinct and different from that of Judge-at-Large or Cadastral Judge, such that the latter had to look forward to being promoted and made a District Judge under a new and different appointment with increased compensation.

Our considered opinion is that if it be, as it is, admitted that Congress can abolish courts inferior to the Supreme Court, it can do the lesser thing of reducing the number or changing the category of judges presiding over such courts. In the case of *Zanducta vs. De la Costa*, 66 Phil., 615. Mr. Justice Laurel, one of the most eminent members of the Constitutional Convention, voiced the opinion that the legislature may abolish courts inferior to the Supreme Court and reorganize them territorially or otherwise, thereby necessitating new appointments and commissions. Indeed, only recently, in the case of *Brillo vs. Enage*, G. R. No. L-7115, we ourselves expressed the view that "el derecho de un juez de desempeñarlo hasta los 70 años de edad o se incapacite no priva al Congreso de su facultad de abolir, fusionar o reorganizar juzgados no constitucionales." Citations from other jurisdictions contain pronouncements to the effect that "if the framers of the Constitution intended to leave it to the legislature to establish and abolish courts as the public necessities demanded, this was not qualified, or limited by the clause as to the judge's term of office," (*McCulley vs. State*, 53 S.W. 134); "a constitutional provision that judges of a certain court shall hold their offices for five years must yield to another provision that the legislature may alter or abolish the court, and therefore the legislature may reduce the number of judges by fixing an end to the terms of certain of them although within five years after they took office. *State ex rel. Kenny vs. Hudspeth* (1890) 59 N.J.L. 304; 37 Atl. 504, 37 Atl. 67; *Nolle v. State* (1698) 62 N.J.L.

533, 41 Atl. 832, affirmed in (1900) 64 N.J.L. 363, 48 Atl. 1118." (4 A.L.R. 216); "the legislative power to create a court carries with it the power to abolish it. When the court is abolished any unexpired term is abolished also. The judge of such a court takes office with that encumbrance and knowledge. (*Cherokee County v. Savage*, 32 So. 2nd 503); and "the legislature has the power to abolish as well as to create, to diminish as well as to increase, the number of judicial districts" (*Alkman vs. Edwards*, 30 L.R.A. 149, 55 Kan. 751, 42 Pac. 366).

The reasons for the above pronouncements are, among others, that security of tenure is certainly not a personal privilege of any particular judge (concurring opinion of Mr. Justice Laurel in *Zanducta vs. De la Costa*, *supra*); a public officer, no matter what the department of the government in which he serves is a public servant, and while the public should deal justly with him, his individual rights are by no means of primary importance (*Alkman vs. Edwards*, 30 L.R.A. 149, 55 Kan. 751, 42 Pac. 366); the judge's right to his full term and his full salary are not dependent alone upon his good conduct, but also upon the contingency that the legislature may for the public good, in ordaining and establishing the courts, from time to time consider his office unnecessary and abolish it (*McCulley vs. State*, 53 S.W. 134).

Properly and logically speaking, the petitioners were not removed from office because a removal implies that the office exists after the ouster. Thus in the case of *Manalang vs. Quitoriano*, G. R. No. L-6898, promulgated on April 30, 1954, this Court said:

"This pretense can not be sustained. To begin with, petitioner has never been Commissioner of the National Employment Service and, hence, he could not have been, and has not been removed therefrom. Secondly, to remove an officer is to oust him from office before the expiration of his term. A removal implies that the office exists after the ouster. Such is not the case of petitioner herein, for Republic Act 761 expressly abolished the Placement Bureau, and, by implication, the office of the Director thereof, which, obviously, cannot exist without said Bureau. By the abolition of the latter and of said office, the right thereto of its incumbent, petitioner herein, was necessarily extinguished thereby. Accordingly, the constitutional mandate to the effect that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law' (Art. XII, Sec. 4, Phil. Const.), is not in point, for there has been neither a removal nor a suspension of the petitioner Manalang, but an abolition of his former office of Director of the Placement Bureau, which, admittedly, is within the power of Congress to undertake by legislation." (*supra*, 50 O.G. 2515.)

To the same effect is the following:

"To dispense with an unnecessary court is not to change his term of judgeship, nor is it to affect the guaranties of the Constitution as to his salary, nor does it remove the judge from office. The office no longer exists, and, of course, a removal from an office that has no existence is not a conceivable proposition." (*McCulley vs. State*, 53 S.W. 134.)

For all practical purposes and to all constitutional intents, a judge of first instance is on the same footing as an officer or employee in the civil service insofar as permanence of tenure is concerned, because whereas the judge is to serve during good behavior, an officer or employee in the civil service may not be removed or suspended except for cause as provided by law. In both cases the office is statutory, and it is fundamental and elementary that a statute cannot be irrevocable. The petitioners are certainly mistaken in believing that the only way to reconcile section 1 with section 9 of Article VIII of the Constitution is to hold that any attempt to abolish the position of a judge should only be made effective after the expiration of his term; because it is no less tenable and sound to rule that a judge may hold office during good behavior only as long as his position lasts. It may not be urged that the latter construction would render section 9 meaningless, for the reason that, in the absence of said constitutional provision, the Congress may fix the judge's term of office at, say, one year, two years, three years, or any definite period.

The case of *Commonwealth vs. Gamble*, 62 Pa. 343, mainly relied upon by the petitioners, is not decisive, since the statute therein involved singled out a particular judge. In the case at bar, as already pointed out, all positions of Judge-at-Large and Cadastral Judge were not abolished. Besides, the case of *Commonwealth vs. Gamble* was invoked in the case of *Alkman vs. Edwards*, *supra*, and the Supreme Court of Kansas did not follow it, holding: "To allow the legislature, while making one new district, to legislate the judge of an old district out of office, and provide for appointment or election of two new judges, would clearly be vicious in the principle, and this is the class of legislation which falls within the constitutional inhibition. But to prohibit the legislature from abolishing a district which had been improvidently established, and thereby vacates the office of a judge, is another and altogether different thing, which the Constitution does not, in express terms, prohibit."

There is no point in the observation that the implied power of Congress to abolish inferior courts cannot prevail over the express constitutional provision on tenure of office. The petitioner's case is also necessarily premised only upon the implied proposition that said tenure may not be shortened. If the power to abolish were intended to be qualified by the permanence of tenure, the Constitution would have, along with the provision that the judges of inferior courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated, further ordained that their term shall not be shortened or affected by the abolition of any inferior courts; in the same way that although the judges "shall receive such compensation as may be fixed by law," the Constitution contains the express limitation that

such compensation "shall not be diminished during their continuance in office" (Section 9, Article VIII, Constitution).

There is nothing to the distinction attempted to be drawn from the circumstance that the legislative power to abolish a court sustained in American cases, was expressly conferred by the Constitution, whereas the right of our Congress to abolish is merely implied from its constitutional power to create inferior courts. In both cases the power exists, and we cannot see any difference as to its force and effect when exercised.

Let it be clearly understood that we are not here concerned with a case of one or more judges of first instance being singled out for elimination nor with a case contemplated by Mr. Justice Laurel in his concurring opinion in *Zanduetta vs. De la Costa*, *supra*, when he gave the warning that where the violation of a constitutional provision regarding security of judicial tenure is palpable and plain, and the legislative power of reorganization is sought to cloak an unconstitutional and evil purpose, it will be the time to make the hammer fall and heavily.

As the power of appointment carries with it the power of removal, it is more logical to suppose that, as the judges are appointed by the President, the security of tenure contemplated by section 9 of Article VIII of the Constitution, was intended more as a restraint against Executive removal; and as a matter of fact, in implementation of this objective, it has been provided in section 67 of the Judiciary Act of 1948 that no District Judge, Judge-at-Large or Cadastral Judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist, in the judgment of the Supreme Court, involving serious misconduct or inefficiency, for the removal of said judge from office after the proper proceedings.

We are not blind to the great importance and imperative desirability of having and maintaining an independent judiciary. At the same time, we cannot abridge the powers of Congress under the Constitution. It is not for us to judge the wisdom of the framers of our Constitution in granting Congress legislative power with reference to the establishment of courts inferior to the Supreme Court. But with all the constitutional and statutory safeguards, and any device conceivable by the ingenuity of man, for judicial independence, after all there can be no surer guaranty for a true administration of justice than the God-given character and fitness of those appointed to the Bench. The judges may be guaranteed a fixed tenure of office during good behavior, but if they are of such stuff as allows them to be subservient to one administration after another, or to cater to the wishes of one litigant after another, the independence of the judiciary will be nothing more than a myth or an empty ideal. Our judges, we are confident, can be of the type of Lord Coke, regardless or in spite of the power of Congress—we do not say unlimited but as herein exercised—to reorganize inferior courts.

PADILLA, J.:

In so far as the security of tenure of judges is concerned, I am in accord with Mr. Justice Bengzon's view. A fixed tenure during good behavior, long recognized as essential to an independent judiciary, has in this country been translated into a constitutional ban limiting the powers of Congress in dealing with the courts and for that reason not to be written off with the argument that as Congress has the express authority to establish courts inferior to the Supreme Court, it necessarily has also the implied authority to abolish them. For how could there be a fixed tenure if the office may at any time be abolished? As the Constitution expressly prohibits the removal of a judge (except for cause) during his term of office, reason dictates that the implied power to abolish courts must be deemed withheld where its exercise would bring about what is prohibited. What the Constitution prohibits the Congress to do directly should not be allowed to be done by indirection, circumvention and resort to an implied power to nullify an express constitutional mandate.

The Constitution provides and ordains that "all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office" and "shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office."¹ It also provides that "No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court. The Congress shall by law determine the residence of judges of inferior courts."²

Section 53 of Republic Act No. 296 provides:

In addition to the District Judges mentioned in section forty-nine hereof there shall also be appointed eighteen Judges-at-large and fifteen Cadastral Judges who shall not be assigned permanently to any judicial district and who shall render duty in such district or province as may, from time to time, be designated by the Department Head. (Under-scoring supplied.)

This is the law that created or established the office of the petitioners. The law offends against section 7, Article VIII, of the Constitution, not only because it does not determine or fix the residence of the petitioners as judges, as ordained by the Constitution, but also because the authority to designate them to render duty in districts or provinces other than those of their residence is lodged in the Department Head alone when according to the same section and article of the Constitution the authority must be exercised with the approval of the Supreme Court. There is no reason why section 9, Article VIII, of the Constitution should be given effect and section 7 of the same article nullified.

The last paragraph of section 3 of Republic Act No. 1186 repeals

¹ Section 9, Article VIII.

² Section 7, *supra*.

section 53 of Republic Act 296 quoted above and the positions of Judges-at-Large and Cadastral Judge are thereby abolished. The paragraph is assailed on the ground that it infringes upon section 9, Article VIII, of the Constitution. By repealing section 53 of Republic Act No. 296 and abolishing the anomalous judicial positions therein created, the Congress has but rectified a grave error—with intent, no doubt, to make the judicial system conform to the Constitution by eliminating therefrom judges that could be moved about at the pleasure of an Executive Department and to that extent exposed to extraneous influences. To permit the continuance of a system that offends against the fundamental law would be a dereliction of duty on the part of Congress. On the other hand, the Constitution is upheld and not violated where judicial positions created or established contrary to its provisions—such as those held by the herein petitioners—are abolished.

For these reasons the petition should be dismissed.

REYES, A., J., concurring:

I concur in the opinion of the Chief Justice. But I must say further that even supposing that Congress may not, as a general rule, abolish a judicial post without allowing the incumbent to finish his term of office, still I see weight in Mr. Justice Padilla's opinion that to allow the petitioners herein to continue as judges-at-large and cadastral judges without permanent assignment and forever subject to being moved from one judicial district to another without the consent of the Supreme Court would be to perpetuate a system repulsive to an independent judiciary and a clear evasion of the Constitution.

LABRADOR, J.:

I do not dispute the fundamental principles which my brethren have expounded as underlying our scheme of government. The independence of the judiciary, its inviolability against executive or legislative encroachment and the permanence of judicial tenure are so plain as to need elucidation. I am also aware of the fact that the judiciary is the weakest of all the three departments of the Government. However, in our zeal to conserve judicial independence we should be careful to guard against self-pity and passion taking the better part of reason and allowing them to becloud the real issue. The question should be dispassionately considered, bearing in mind, on the one hand, that every presumption of good faith should be accorded a coordinate department that had decreed the passage of the disputed legislation, especially as in the present instance the legislative department has been expressly granted the power to organize or reorganize inferior courts (Section 1, Article VIII, Constitution of the Philippines), and on the other, the nature of the offices abolished and the underlying causes for said abolition, as these

circumstances in a very great measure may give an aspect to the issue different from what it may appear to be.

The office of judge-at-large was introduced in this jurisdiction in the year 1902. It is a peculiar contraption unknown in other judicial systems. Under Act No. 396 (Philippine Commission, May 9, 1902), four judges of first instance, in addition to those created in Act No. 136, were to be appointed, who "may be required to perform the duties of the judge of first instance of any province, when directed by the Civil Governor." But under the first judicial reorganization act (Act No. 2347, approved February 28, 1914), the positions of auxiliary judges of first instance were created in the place of judge-at-large in that he is appointed to a group of judicial districts to which he is appointed and acquires the right to hold court and exercise judicial function only if and when he is assigned by the Executive Department to a district. Under Act No. 2347 the auxiliary judge was to hold session in the place of his residence. Specific prohibition existed against his serving in any district not included in his commission. (Sec. 4.)

The positions of auxiliary judges were continued in the Administrative Code of 1916 and 1917. Under the latter, the stations of auxiliary judges were fixed, and they were to hold court thereat without need of assignment by the Secretary of Justice, but only upon request of a judge of a district. (Secs. 157-160.) These positions of auxiliary judges were continued until December 6, 1932, when Act No. 4007 by amending Section 157 of the Administrative Code again created the positions of six judges-at-large, who were not assigned to any judicial district but were to hold court in any district when the Secretary of Justice designates them to do so.

"Sec. 157. *Judges-at-Large*.—In addition to the judges mentioned in section one hundred and fifty-four hereof, as amended, there shall also be appointed six judges who shall not be assigned permanently to any judicial district and who shall render duty in such districts or provinces as may, from time to time, be designated by the Department Head. (Sec. 24, Act No. 4007.)

The above was the set-up of judges-at-large when the Constitution was approved. Thereafter, on November 7, 1936, Commonwealth Act No. 145 reduced the number of judges-at-large to five. (Sec. 3.) On August 19, 1938, C.A. No. 348 increased the number of judges-at-large to twelve. (Sec. 2.)

The positions of cadastral judges were first created under C.A. No. 504, which provides:

"Sec. 1. In addition to the existing positions of judges of first instance, there are created fifteen positions of judges of first instance to be appointed as provided by law. Said judges shall be paid a salary of eight thousand four hundred pesos per annum each, and shall have the same rank, powers and privileges enjoyed by and granted to judges of first instance, but their jurisdiction shall be limited to

cases arising under the Cadastral Act and the Land Registration Act. They shall render duty in such judicial districts or provinces as may, from time to time, be designated by the Secretary of Justice."

There were, prior to the passage of Republic Act No. 1186, 18 positions of judges-at-large and 15 positions of cadastral judges. (sec. 53, R.A. No. 296.)

While the idea of a judge-at-large may be traced to an early date (1902) it was suppressed in 1914 and did not appear again in our judicial system until 1932. Its usefulness as a contrivance to help in the clearing of clogged dockets may be admitted, but its useful existence for a long time in our statute books can not cure or remedy its fundamental defect—the lack of a specific district where the judge can exercise his judicial functions freely without interference from any one, much less an executive or administrative superior, and from which he may not be moved away without his consent. It must be remembered that one of the legal ramparts guarding judicial independence is irremovability from the district to which one is appointed. This principle was first enunciated in the case of *Borromeo vs. Mariano*, 41 Phil. 322, and I hold that it should not apply to district judges alone, but to all judges of any court of any grade. If a judge can be moved from one place to another at the will or mercy of an executive official he certainly cannot have the freedom to act in the trial and decision of cases according to the dictates of his reason and conscience; there is no hindrance for him to trade his convictions for personal conveniences in order to win favor with the executive authority that assigns him and upon whose good will his promotion depends.

The other fundamental defect of the system of judges-at-large is the power of the Executive branch to determine where judges shall sit. Through the exercise of this power the Executive branch can assign friendly, or sympathetic, or willing tools to any place to try specific cases so that these may be tried and decided in the form and manner in which the Executive branch desires.

The office of judge-at-large, therefore, is incompatible with the principle of judicial independence. In the cases of *Borromeo vs. Mariano*, *supra*, and *Concepcion vs. Paredes* (42 Phil. 599), this Court frowned upon the attempt to transfer a judge to another district against his will and the attempt to decide by lot where judges shall sit, these being, according to the Court, subversive of judicial independence, self-respect, and integrity, it is much more undesirable and condemnable to have judges act as such only if and when directed by an executive officer and only at places to which they are assigned.

Section 7 of Article VIII of the Constitution provides:

"No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme

Court. The Congress shall by law determine the residence of judges of inferior courts."

The above provision of the residence of judges was inserted because judges of first instance used to reside in Manila, or in places other than where they hold court, making them unavailable in their courts except where they actually hold sessions, to the great inconvenience of the public, and impairing their efficiency, because the time and energy spent by them in going to and from their residence to their courts, reduced the time and attention they could devote to their work. The prevailing feeling in the Constitutional Convention that judges of first instance should have designated places of residence must be considered applicable to judges-at-large, who resided in Manila. They could not permanently reside in districts out of Manila because by the very nature of their office they were to be assigned from time to time to different provinces of the Archipelago where their services are needed.

Notwithstanding the constitutional directive for the legislature to provide by law the residences of judges of inferior courts, the legislature did not for some time see fit to provide official residences for judges-at-large and cadastral judges. In time, the party in power saw in these judges-at-large and cadastral judges, and specially in the peculiar provision that they shall hold court only in places to which they may be assigned by the Secretary of Justice, a means to influence the course of justice. Through the Secretary of Justice, a political appointee, friendly or sympathetic judges-at-large and cadastral judges were picked up for assignment to places where the administration or the party in power or the influential politicians desired cases (especially election cases) to be decided in one way or another. In time, judges-at-large and cadastral judges were not only assigned to specific provinces, but they were assigned to hear particular cases and authorized to decide these cases in Manila. In one notorious case once before this Court, a judge-at-large was made to abandon a heavy calendar of hearings to try a case in a nearby province presumably in the form and manner in which the Administration desired it to be conducted or decided, to the extreme inconvenience of the residents of the province where his calendar was previously fixed and to the just indignation of lovers of justice. (*Montano vs. Mejia*, G.R. No. L-6416.)

It has come to pass, therefore, that the offices of judges-at-large and cadastral judges, which were established for the prompt dispatch of cases has become the avenue through which pernicious political influence has sought to corrupt the administration of justice. It can not be denied that it is this intolerable anomaly which Congress sought to remedy by Sec. 3, par. 2 of Republic Act No. 1186, although some legislators may have personal reasons of their own in supporting its passage. To the credit of the present Congress, let it be said that the disputed

provision constitutes an act of relinquishment by the party in power of a strong political weapon which it could utilize to its own advantage.

As we see it the Act is a positive remedy seeking to eradicate a gangrenous evil that has been slowly but surely sapping public confidence in the administration of justice. Viewed from its purpose and aim, it cannot be said to have been passed to legislate judges out, which would be an encroachment on the independence of the judiciary; it is rather the painful amputation of an anomalous and gangrenous appendage, through which politics had influenced the judiciary. It is the painful extraction of a tooth through which the germs of infection seek to poison the whole judicial body. Removal of said gangrenous appendage, or extraction of the infectious tooth, or the eradication of the root of the evil is not interference with judicial independence; it is freeing it of political influence, the cutting off of the avenue leading thereto, over which pernicious politics had passed to influence the administration of justice. To the judicial system it is indeed painful, but the operation may be likened unto the situation covered by the following Biblical passage:

"And if thy hand, or thy foot scandalize thee, cut it off, and cast it from thee. It is better for thee to go into life maimed or lame, than having two hands or two feet, to be cast into everlasting fire."
(St. Matthew, chap. 18, v. 8).

This to my mind is not the occasion when, in the words of Justice Laurel, we must let "the hammer fall." It is rather an occasion when we should not look for defects in the law, but seek its justification. We find such justification, if not in words of the constitutional directive that the legislature fixes the residences of judges, at least in the reason or spirit of the other provision that judges shall be assigned to districts from which they may not be removed or taken away.

There is and there can be no question as to the existence of the power of Congress to abolish or to reorganize inferior courts. This power is expressly granted to Congress by the Constitution when it provided in Section 1, Article VIII that the judicial power shall be vested in one Supreme Court and in "such inferior courts as may be established by law," or in Section 2 of the same Article. But our Constitution also expressly guarantees that judges shall not be removed from office until they reach the age of seventy years, or become incapacitated to discharge the duties of their office (Sec. 9, Article VIII). It is these two conflicting concepts that we are called upon to apply in the case at bar.

As I understand it, the question at issue is not, May the legislature legislate judges out of office by a supposed act of judicial reorganization? That would be unfair to the legislature that enacted the provision and a distortion of the issue, for judges are not being eased out but their positions are being abolished and are not being filled by others.

If that were the issue there would be no tenable side than the negative. The question should rather be stated thus: Has the legislature abused its power to reorganize courts of first instance when it abolished the positions of judges-at-large and cadastral judges?

No one denies the fact that the power to abolish or reorganize inferior courts should be reconciled with the permanence of judicial tenure, as both proceed from constitutional provisions. But were we to hold that judicial tenure is paramount over the legislative power to reorganize, the latter would be impotent to exercise the power granted, for it can not be denied that a judicial reorganization or a minor change in the judicial system must always affect incumbents of judicial offices. The power to reorganize the judicial system should be considered paramount over the permanence of judicial tenure, the latter serving only as a limitation when the legislative power has been abused. For we can not conceive, by the mere guaranty of tenure, that the Constitution intended to convert the judicial body into such a privileged group of untouchables that even the legitimate needs and desires of the body politics, as expressed through its lawful representative, must be subordinated thereto and abide the passing away of judges. Were we to accept the principle enunciated in the opinion sustaining that the legislative reorganization cannot override tenure, we would be making the admittedly weakest department of the Government supreme and converting a representative democracy into a judicial oligarchy. All arguments offered against the constitutionality of the disputed provisions would be valid against the Supreme Court, a constitutional court, but not against the inferior courts as to which the Constitution grants the legislature plenary power of organization and consequently of reorganization.

I have taken pains to examine the most important cases which have been cited in favor of one or the other side, but I have found no single case which exactly fits the facts of the case at bar. The case of *State vs. Friedley*, 34 N.E. 872, cannot be cited in support of the view that the Act or the provisions of the Act under our consideration are unconstitutional. In that case the relator Gibson was the sole judge of the fourth judicial district of Indiana, and Friedley, the sole judge of the fifth judicial district. By an act of the legislature the fifth judicial circuit was abolished and the territory covered by it attached to the fourth judicial circuit. As Friedley continued to exercise his office as judge, Gibson instituted a case to determine Friedley's right to hold office in the fourth judicial district. Gibson contended that Friedley had no right to exercise the office as the same had been abolished by the act of the legislature. The Supreme Court of Indiana held that the legislature could not abolish the circuit and thus legislate out of office the judge and the prosecuting attorney of the fifth judicial circuit, for were it

permitted to do so, the judiciary would be subjected to the legislative power and judicial independence destroyed. But it should be noted that the Indiana constitution not only fixed the term of the circuit judge for six years, but under it circuit courts are constitutional courts. (Art. 7, sec. 161, Rev. Stat. 1881.) The court said that if the legislature may abolish a circuit and its act be made to take effect at all, it should not be before the expiration of the term of office of the judge at the time of the act *for the reason that the judge is a constitutional officer.* This case is different from the case at bar in that under the Indiana constitution circuit courts were constitutional courts. (Const., Art. 7, sec. 161, Rev. Stat. 1881) and the term of a circuit judge fixed at six years (*idem*, sec. 169), while in this jurisdiction courts of first instance are not constitutional courts and *there is an express provision of the constitution authorizing the legislature to reorganize or even abolish inferior courts, including courts of first instance.* (Article VIII, Sec. 1 of the Constitution vest jurisdiction in the Supreme Court and in such other inferior courts as the law may determine.)

Another case cited to sustain the view of unconstitutionality is the case of *Commonwealth vs. Gamble*, 62 Pa. 343, 1 Am. Rep. 422. In this case, Gamble received a commission from the governor the tenure of which was by the constitution to continue for ten years on the only condition that he should so long behave himself well. Subsequently, the legislature passed a law approved by the governor abolishing the district to which he was appointed, transferring it to, and constituting a part of, another district. The constitution provided that Judge Gamble shall hold office for a term of ten years, if he should so long behave himself well. At the time of the passage of the act Gamble's commission had nine and two-thirds years more to run. The court held that the act of the legislature was void because it was violative of the constitutional provision. The court said: The power and authority of the judge were expressly granted by the Constitution to continue to be exercised for a period of ten years and this constitutional grant of right and authority may not be changed by legislative action, because if the legislature were authorized to modify (the term) by legislative act then would the authority of the constitution be subject and subordinate to legislative authority. Neither is this case applicable to the case at bar because the term of office of Gamble was fixed expressly by the Constitution at ten years, which is not the case of judges-at-large and cadastral judges, now petitioners in this case.

A third case cited against the constitutionality of the provision is the *Opinion of Justice*, 171 N.E. 237. In this case, a proposed legislation was submitted to the supreme judicial court of Massachusetts for an opinion on the provisions therein to the effect that judges who have reached the age of 70 years shall be retired to part time service. There

was then no provision in the Massachusetts constitution similar to ours and regarding compulsory retirement at the age of seventy. The supreme judicial court held that the proposed provision is violative of the provision of the constitution that all judicial officers shall hold their offices during good behavior. The court said that tenure of office of judges as thus settled by the constitution is imperative and final and the same may not be enlarged, limited, modified, altered or in any way affected by the General Court. This case is not applicable to the case at bar because no position was abolished. The positions were continued and the incumbents were sought to be deprived of their offices upon their reaching the age of 70 years. The case was clearly shortening the tenure of judicial incumbents and can not apply to the case at bar where the positions or offices of judges-at-large and cadastral judges are abolished.

Let us now examine the cases that hold the contrary view. In the case of *Aikman vs. Edward*, 30 L.R.A. 149, an act of the legislature abolishing certain judicial districts was attached on the following ground: that it violated the purpose and intent of the constitution to protect the judicial department from legislative interference and to insure to judges a tenure of office for the terms for which they were elected. In that case there is even a constitutional provision fixing the term of the judges of district courts and prescribing the mode of their removal from office (which is not the case in the Philippines). The judicial districts which were abolished had been established in the belief that they would be necessary to meet an expected increase in the population which did not materialize; so the legislature thought it necessary and expedient to abolish some of them. The court said "jealousy of encroachments on judicial power must not blind us to the just power of the legislature in determining within constitutional limits the number of courts required by the public exigencies, x x x" (p. 153). It also said *that the rights of an individual holding the position of judge cannot be considered as paramount and superior to the rights of the public* and that it was not within the intention of the constitution to prohibit the legislature from abolishing a district which had been improvidently established and thereby vacate the office of the judge. In determining the conflict between two constitutional powers and rights, the power of the legislature to reorganize the courts as against the individual right of a judge to hold his office during good behavior, the court implied that if the reorganization is for a public interest, the right to the office must give way. In other words, public interest and public good must prevail over and above the tenure of judicial office, and the holder thereof cannot complain if the legislature by a legitimate exercise of its legislative power over reorganization abolishes his office.

Another pertinent case to our inquiry is the case of *State ex rel. Coleman vs. Campbell* reported in 3 Tenn. Cas. 355 and cited in *McCulley vs. State*, 53 S.W. 134, 139, 140-141. In that case an action of the Tennessee legislature abolished the second circuit court and the second chancery court of Shelby county, evidently in pursuance of the provisions of the Tennessee constitution of 1870 to the effect that "the judicial power shall be vested in one supreme court and in such circuit, chancery and other inferior courts as the legislature may from time to time ordain and establish." The court held that the act abolishing district courts is not unconstitutional. As the constitutional provision granting power to the legislature is similar to ours, we quote hereinbelow freely from the words of the decision:

"x x x The ordaining and establishing of such courts was to be the business of the legislature through all time. It was impossible that the object to be accomplished could be effectuated by simply adding to number of circuits or districts. Changes would or might become necessary, which involved the necessity of abolishing existing circuits or districts, in ordaining and establishing others, or in reducing the number if experience should prove that the public good required a reduction. The power to abolish for the purpose of effecting these objects was therefore necessarily implied. x x x."

* * * *

"x x x It appears to us to be the exercise of a legitimate power by the legislature, under the conviction that two of the courts in Memphis were unnecessary for the dispatch of the public business, and that, therefore, for the promotion of the public good, they were abolished as useless, and their work assigned to two other existing courts. x x x."

* * * *

"x x x In our view of the constitution, the judge's right to his full term and his full salary is not dependent alone upon his good conduct, but also upon the contingency that the legislature may, for the public good, in ordaining and establishing the courts, from time to time, consider his office unnecessary and abolish it. The exercise of this power by the legislature is not such an interference with the independence of the judge, or with his tenure of office, as can be properly complained of. The power may possibly be exercised without good cause, but in such case the courts can furnish no remedy."

With respect to the right of the legislature by the abolition of the court to affect the term of an incumbent judge, the court cited the decision of Judge McFarland in *Halsey vs. Gaines*, 2 Lea 316, who said:

"But it is argued that, although by the foregoing construction the legislature may have power to abolish courts when they become unnecessary, the abolition of the court can only take effect at the expiration of the judge's term; otherwise, we defeat that clause of the constitution which says that the judge's term shall be eight years. If the framers of the constitution intended to leave it to the legislature to establish and abolish courts as the public necessities demanded, this was not qualified or limited by the clause as to the

judge's term to overthrow the other clause, whereas we construe the provision that the judge's term shall be eight years to be upon the assumption that the court continues to exist; otherwise, we should have to hold that the court must continue, although declared unnecessary and abolished by the legislature, simply to secure to the judge his full term and salary. x x x It is argued that the act abolishing the court did not abolish the judgeship. Our constitution does not recognize a judgeship except as the judge is the incumbent of a court or courts which he is commissioned to hold. We have no supernumeraries. x x x If the law abolishing the courts is valid, the offices and their incumbents necessarily cease, and of course, along with them their salaries. x x x To dispense with an unnecessary court is not to change the term of judgeship, nor is it to affect the guaranties of the constitution as to his salary, nor does it remove the judge from office. The office no longer exists, and, of course, a removal from an office that has no existence is not a conceivable proposition." (53 S.W. 141-142.)

It is believed that the above authority fully supports the principle that the legislature may abolish a court for the public good. In other words, the public good may justify abolition and if the judges of the abolished courts are deprived thereof, they should not complain. Why should a position maintained by public funds continue when its continuance is unnecessary or, as in the case at bar, detrimental to public interest?

The words of Judge McFarland above quoted also flatly refute the argument that by the disputed provisions the legislature is legislating judges out of office. Had the positions been retained and given to others the claim would hold water. As it is, however, judgeships without particular districts have been abolished, or offices abolished, and as the offices are no longer existing, how can we say that tenure thereof can exist? How can there be tenure of office for an office that does not exist?

Mr. Justice Bautista Angelo, who holds the view that the law is unconstitutional, admits that there are three accepted views on whether or not the legislature may constitutionally abolish judicial offices. He says that the first theory is that the power to abolish inferior courts may be exercised without any restriction in the sense that once a court is abolished any unexpired term of the incumbent judge is deemed terminated. The second theory is that while a legislature may abolish an inferior court it cannot do so when its effect is to terminate the tenure of an incumbent judge because such tenure is guaranteed by the constitution. The third is that a legislature may abolish a court and terminate the unexpired term of the judge provided the abolition of the court is done in good faith. Assuming that these theories are stated correctly, the undersigned expresses the view that the validity of the provisions impugned should be sustained, in consonance with the third theory, for the reason that the abolition has been motivated by a

wise and legitimate policy—the desire to eliminate a source of evil existing in the judicial system (as we have already adverted to above).

There is a last reason for sustaining the validity of the disputed provisions. When the Constitutional Convention recognized the importance of the irremovability of judges from their respective districts to protect their independence, and directed the legislature by law to provide for the residences of judges of inferior courts, it desired and expected the legislature to implement this directive and provide residences for all judges of inferior courts, presumably judges-at-large who had no official residences. Analogous directives are contained in the Constitution, such as the one regarding the establishment of a national language, which the legislature has already implemented. When the Convention directed that the residences of judges of inferior courts should be fixed, it could not have intended to extend the right to permanent judicial tenure to those holding positions which it expected the legislature to abolish in pursuance of the constitutional directive. In other words, it is to be presumed that when the Convention adopted the permanence of tenure for judicial officers, it meant to extend it only to judges with permanent stations, not to judges holding the positions for which the law at the time of the Convention had not provided official residences and which the Constitution impliedly prohibited. Failure on the part of the legislature to implement the constitutional directive, cannot be interpreted to raise the category of judges-at-large to that of judges of district courts, in so far as tenure is concerned.

Fear is felt that if the validity of the provisions in question is sustained, judges would be at the mercy of the legislature and their independence curtailed. I hold that fear should not be the basis of, or distort, fundamental principles. If and when a coordinate branch of the Government should seek to go beyond its legitimate sphere and encroach upon another, that will be the time to act promptly and decisively. In the words of Justice Laurel, then shall be the occasion to let the hammer fall and heavily. But when as in the instant case the legislative act is clearly induced by the highest motives to remove a source of evil in the judicial system and free it from an anomalous appendage through which pernicious politics had sought to influence judges, and appears, besides, to implement a constitutional directive, let us not insinuate that judicial independence is being impaired lest our jealous regard thereof be misinterpreted, and instead of encouraging judicial valor we will be inducing judicial arrogance.

For the above reasons, in view of the evident good faith and motive which have induced the legislative department of the Government to enact the disputed provisions, I am constrained to hold that the abolition by the legislature of the positions of judges-at-large and cadastral judges does not constitute an abuse of the power of reorganization granted to it by

the Constitution. Wherefore, I vote against the granting of the petition that the disputed provisions of the new Judiciary Law (Republic Act No. 1186) be declared unconstitutional and void, as against the petitioners.

BENGZON, J.:

The outcome of this litigation is apt to revive the speculation whether wittingly or unwittingly the Constitution has further weakened the usually weak judicial department. For here is an attempt, or the beginning of attempts against the independence of the local judicature and yet the Supreme Court (seven justices, more than a mere majority) finds itself powerless to check it, the Constitution having tied its hands with the provision that a two-thirds vote shall be necessary to declare a statute unconstitutional.* Seven justices say the law violates the constitution; four others decide to sustain it, and their view prevails. The opinions of seven members are in fact dissenting opinions.

When Republic Act No. 1186 took effect on June 19, 1954, the ten petitioners were presiding different courts of first instance, some as judges-at-large, others as cadastral judges. Shortly thereafter they were notified by the respondent Secretary of Justice that had ceased to hold office by virtue of the provision of section 3 of said Act declaring, "all the existing positions of Judges-at-Large and Cadastral Judges are abolished."

Petitioners contend that, in abolishing their positions and removing them, Congress and respondents unconstitutionally shortened their terms of office prescribed by the Constitution. Wherefore, they ask for declaration of invalidity of said section, and for judgment that their position and offices still exist, with their corresponding right to exercise the functions thereof. They also request appropriate orders for payment of their compensation, and for other relief. Invoking the organic provision that judges "shall hold office during good behaviour, until they reach the age of seventy years, or become incapacitated,"¹ they affirm they have not been guilty of misconduct, have not reached 70 years and are physically capable to perform their duties.

For answer, the Solicitor-General maintains that petitioners' right to act as judges had ceased with the extinction of their positions, Congress having the constitutional power to abolish inferior courts, including the positions of Judges-at-Large and Cadastral Judges. Commendably avoiding all issues as misconduct, age or capacity, he maintains, as secondary proposition, that anyway the statute creating petitioners' positions violated the Constitution and established no judicial office.

* No intent here to criticize the Convention. Obviously it was cognizant of F.D. Roosevelt's allergy to five-to-four decisions of the U.S. Supreme Court nullifying important legislation; and to insure F.D.R.'s approval (plus other reasons) it included among the features of our Organic Act the two-thirds innovation.

¹ Art. VIII sec. 9.

The second defense will be taken up later. The first, in our opinion, is the most important.

Never in our history has such a number of judges of first instance been ousted thru judicial reorganization. In the several court revamps heretofore effected, it was assumed generally that incumbent judges had to be retained, and they were either re-appointed, promoted or placed in other important government positions. To assure judicial independence there was widespread acquiescence in their privilege to retain their posts during good behaviour, or until they reached the age of 65 years,² irrespective of structural government changes, motivated or not by the tides of political fortune. Some—very few indeed—lost their positions; but on applying to the courts for relief asserting judicial security of tenure, they failed upon grounds other than Congressional power to ease them out. (*Summers v. Ozaeta* L-1534; *Zanduetta v. De la Costa* 66 Phil. 615). This controversy brings the first issue squarely to the fore, because the petition may be granted only upon a showing of Congressional lack of power to sweep petitioners out of their posts.

It is necessary for the Court to interpret and apply the following Constitutional provisions:

"xxx judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law." (Art. VIII sec. 1.)

"xxx the Congress shall have the power to define, prescribe and apportion the jurisdiction of the various courts." (Art. VIII sec. 2.)

"No judge appointed for particular district shall be designated or transferred to another district without the approval of the Supreme Court. x x x." (Art. VIII sec. 7.)

"The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. They shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office." (Art. VIII sec. 9.)

As already stated, petitioners argue that Republic Act 1186 particularly section 3, abridged the tenure vouchsafed to them by above section 9—none of them having become incapacitated, or attained seventy years or been guilty of misconduct.

Respondents, on the other hand, assert that Congressional power to establish courts and apportion their jurisdiction implies power to suppress courts already established, together with the positions of incumbent judges. And, they insist, there is no tenure of office to be respected and upheld under above sec. 9 where there is no existing office.

A careful analysis will perceive that, whereas petitioners invoke an express guaranty or positive definition of their term of office, the res-

² Before the Constitution, 65 years was the retirement age.

pondents rely on *implied* authority to abolish courts and the positions of the respective judges. Accurately stated, respondents' defense rests on a *second* inference deduced from such *implied* power, because they reason out thusly: Congress has express power to establish courts; *therefore* it has implicit power to abolish courts and the positions of judges of such abolished courts (first inference); *and therefore* (second inference) Congress likewise has power to eject the judges holding such positions.

Resultant juridical situation: The *implied* authority invoked by respondents collides with the *express* guaranty of tenure protecting the petitioners. Which shall prevail? Obviously the express guaranty must override the implied authority. "Implications can never be permitted to contradict the expressed intent or to defeat its purpose." (72 C.J.S. p. 633.) "Express provisions prevail over implied provisions which contradict them." (82 C.J.S. p. 720.) The situation is quite similar to *Montenegro v. Castañeda*³ wherein the Bill of Rights *impliedly* denied the President's power to suspend the writ of habeas corpus in case of imminent danger of invasion, whereas a subsequent article, sec. 10, *expressly* authorized the President to suspend where there is imminent danger of invasion. We sustain the Executive's power, quoting with approval the following precedents:

"It is a general rule in the construction of writings, that, a general intent appearing, it shall control the particular intent; but this rule must sometimes give way, and effect must be given to a particular intent plainly express in one part of a constitution, though apparently opposed to a general intent deduced from other parts. *Warren v. Shuman*, 5 Tex. 441. In *Quick v. Whitewater Township*, 7 Ind. 570, it was said that if two provisions of a written constitution are irreconcilably repugnant, that which is last in order of time and in local position is to be preferred. In *Gula. C. & S.F. Ry. Co. v. Rambolt*, 67 Tex. 654, 4 S.W. 356, this rule was recognized as a last resort, but if the last provision is more comprehensive and specific it was held that it should be given effect on that ground."

"And in *Hong vs. Washington Oregon Corp.* (1915) 147 Pac. Rep., 765 at p. 763 it was said: "It is a familiar rule of construction that, where two provisions of a written Constitution are repugnant to each other, that which is last in order of time and in local position is to be preferred. *Quick v. White Water Township*, 7 Ind. 570; *G., G. & E. Ry. Co. v. Tambolt*, 67 Tex. 654, 4 S.W. 356. So even assuming the two clauses discussed are repugnant, the latter must prevail."

But the collision may be—should be—avoided, and both sections given validity, if one be considered a proviso or exception to the other. In other words, under the Constitution the Congress may abolish existing

³ 1952 O.G. 3392.

courts, provided it does not thereby remove the incumbent judges; such abolition to take effect upon termination of their incumbency.* The fundamental provisions on the matter are thereby "coordinated and harmonized" as Justice Laurel suggested in his concurring opinion in *Zan-dueta v. De la Costa*. To bring about reconciliations is the great work of jurists. (Cardozo, *Paradoxes of Legal Science* p. 6.)

This is no novel theory of local vintage. Many American precedents uphold it.

"However, when the Constitution ordains that a judge hold his office for a fixed term, the constitution governs, and the legislature has no power to alter his tenure, either by enlarging or shortening the term, directly or indirectly." 48 C.J.S. p. 969, citing cases from Kentucky, Massachusetts and Pennsylvania.)

In *State v. Friedley* an act of the legislature of Indiana abolished the fifth judicial circuit presided by William T. Friedley and attached its territory and business to the fourth judicial circuit presided by George Gibson. In a contest for the office between the two, Friedley invoked the constitutional provision that judges "shall hold office for six years." Gibson invoked the Legislature's constitutional power (sec. 169) to divide the State from time to time into judicial circuits. The Indiana Supreme Court by unanimous vote held the law unconstitutional for violating the judge's tenure of office. It said:

"It seems beyond the power of the legislature to legislate a judge and prosecuting attorney out of office, and if the legislature cannot, by a direct act, deprive them of their offices, neither can it do so by the indirect mode of abolishing their circuit."

"To construe this section (169) to mean that the legislature can, at its own will, abolish the circuit, and thus legislate the judge and prosecuting attorney out of office, in addition to being in direct conflict with the other provisions of our organic law, would also put the official life of every judge and every prosecuting attorney of the state at the mercy of the legislature. It would subject the judiciary to the legislative power, and utterly destroy all judicial independence. Judges and prosecutors would be at the whim or caprice of the senators and representatives, in their tenure of office."

"It is not to be assumed that the framers of the constitution builded it so unwisely as to secure to a judge an office and its tenure x x x for a period of six years, if he so long behave well, and by the same

* Exceptions might be: actual war or some other clear national emergency. See *State v. Friedley* 135 Ind. 119; 34 N.E. Rep. 572 at p. 576.

The abolition of the Court of Appeals after liberation was a war emergency measure, and the justices so understood. But in recognition of their interrupted tenure or because of it, the Government promoted many of them soon to the Supreme Court (Briones, Padilla, Tuason, Hontiveros, Bengzon). Others were appointed to important positions, (Enage, Generoso, Lopez, Vito); and when the Court was recreated a year thereafter, the remaining available justices were re-appointed thereto (Montemayor, Alex Reyes, Torres). Imperial was a senator, and Sison was under indictment for collaboration. Reyes had reached seventy and M. Albert was already practising law.

The peoples court was, by law of its own creation, a temporary organization.

organic law intended its will, from the exercise of all the privileges and duties pertaining thereto, without a hearing, without a conviction for misconduct, under the guise of "from time to time dividing the state into judicial circuits."

"Such division may be exercised by the legislature where the act does not legislate judges and prosecutors out of their respective offices, but not otherwise. The general assembly may add to or may take from the territory constituting a circuit, *if the act be made to take effect at, and not before, the expiration of the terms of office of the judge and prosecutor of such office, as constituted, at the time of the act.*" (underscoring ours).

"The case of *State v. Noble*, 118 Ind. 350, 21 N.E. Rep. 244, fully establishes the independence of the judiciary. The legislature cannot extend or abridge the term of an office, the tenure of which is fixed by the constitution. *Howard v. State*, 10 Ind. 99. The case of *Moser v. Long*, 64 Ind. 189, holds that the office of prosecuting attorney of a circuit court is one provided for by the constitution, which fixes the term of office at two years, and the legislature can neither abolish the office nor abridge the term thereof."

"In *State v. Johnston*, 101 Ind. 223, it is decided by the court that the general assembly has the power, at its discretion, to divide a judicial circuit at any time during the terms of office of the judge and prosecuting attorney of such circuit, subject only to the restrictions that the legislature cannot, by any legislation, abridge either of them of a judicial circuit wherein he may serve out the constitutional term for which he was elected."

In *Com. v. Gamble* 62 Pa. St. 343 the Pennsylvania Legislature established the 29th judicial district by the act of Feb. 28, 1868 and James Gamble was commissioned judge thereof. By the Pennsylvania Constitution he was entitled to continue in office ten years, if he shall behave himself well. By an act of March 16, 1869 the former act was repealed and the district was abolished. The Supreme Court of Pennsylvania sustained Judge Gamble's right to the office saying:

"x x x, if the legislature could blot out a district, it could limit the duration of the commission granted to a less period than ten years, if it might so choose. That it cannot shorten the tenure of the office of a judge, as fixed by the constitution, is certain, and this ought to establish that it can pass no act to do by indirection that which may not be done directly."

A unanimous opinion of the justices of the Massachusetts Supreme Court held that, as the Constitution gave judges tenure "during good behaviour," the general power of the legislature "General Court" to abolish courts did not include authority to compel retirement of judges reaching the age of seventy. It explained,

"The tenure of office of judges as thus settled by the Constitution is imperative and final. It cannot be enlarged, limited, modified, altered or in any way affected by the General Court." (271 Mass. 575, 171 N.E. Rep. p. 240.)

Under a Constitutional power to "ordain and establish inferior courts" the legislature has no power to change the term fixed by the Constitution

for the judges thereof. (See *State v. Clark*, 87 Conn. 537, 89 Atl. 172. 52 L.R.A. (N.S.) p. 912.)

The four-year term fixed by the Constitution "is beyond legislative change. It is a fixed guaranty." (See *State v. Thomas*, 10 Kan. 191, *Wilson v. Shaw*, 188 N.W. 943.)

Legislature cannot, by abolishing or changing juridical circuits, remove or legislate judges from office prior to expiration of their terms.

(*State ex rel. Wadsworth v. Wright* 5 N.E. (2d) 504, 211 Ind. 41.) (footnote 48 C.J.S. p. 975.)

"Where a city has been reincorporated, but its name, identity, and territorial limits remain the same, a justice of the peace cannot be legislated out of office by the new charter's provision reducing the number of justices, when the Constitution provides that a justice shall hold office for four years and until his successor is elected and qualified. *Gratopp v. Van Ep* (1897) 113 Mich. 590, 71 N.W. 1080." (Vol. 4, A.L.R. p. 211.)

"The office of police magistrate in cities of the second class having more than 5,000 and less than 25,000 inhabitants is created and the length of the term fixed by the Constitution. The Legislature cannot change the length of the term nor remove the incumbent by legislation before the expiration of his term." [Syllabus *State ex rel. Mc. Dermott County Atty. v. Reilly*, 94 Neb. 232) 142 Rep. p. 923.]

"In *State v. Stuhu*, 52 Neb. 209, 71 N.W. 941, the act criticized provided that the police magistrate elected in Omaha in 1897 should enter upon his term of office before the term of the then incumbent expired, thus abridging the term of the incumbent, and this was held the legislature could not do, since the Constitution fixed the term of the incumbent at two years. It was because *the legislature could not shorten the term of the incumbent that the time fixed for the new term to begin was in violation of the Constitution, and not because the Constitution fixed definitely when each term shall begin.*" (142 N.W. Rep. p. 924).

(Other authorities mentioned in the petitioner's carefully prepared brief are omitted for the sake of brevity.)

Admittedly, Section 9 Art. VIII aims to preserve the independence of the judiciary. It assures judges that so long as they behave, they cannot be removed from office—no matter what party controls the Government—until they reach the age of seventy years or become incapacitated. To complete their independence from political control or pressure, it further assures them that their salaries cannot be diminished during their incumbency (sec. 9). Hence it may be asked, of what consequence is the assurance of salary non-diminution, if any judges could be legislated out thru a court reorganization?

So much did our Constitutional Convention desire to stabilize judicial tenure that it overruled a motion to permit the transfer of judges from

one district to another thru a court reshuffle.

"The judiciary committee of three practically endorsed the recommendation of the Convention committee on judicial power on the matter, in the following provision:

'No judge who has been appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court.'

"This provision of the revised judiciary articles was considered by the Convention on January 17, 1953.

"Delegate Bernabe de Guzman proposed an amendment to the effect that this provision should not be applicable to a reorganizations of tribunals of justice or of districts; but the amendment was defeated easily without debates." (Aruego, *Framing of the Philippine Constitution*, Vol. 1, p. 513).

Now, therefore, having vetoed the transfer of judges thru a re-organization, the Convention evidently could not have permitted the removal of judges thru re-organization.

The principle of an independent judiciary, co-equal and co-important with the other two branches of the Government came to our shores with the American occupation. Yet the independence of judges—particularly of the inferior courts, was of slow growth,^{3a} until it received vigorous fertilization in the Borromeo precedent⁴ wherein this Court in a bold stroke of judicial statesmanship spelled out of doubtful provisions the doctrine that a judge of first instance *may not without his consent* be transferred by the Governor-General to another district, because such power to transfer could be a means to whip into line such judges as may defy superior official dictation.

The gesture was well received, the *inmovilidad de jueces* was here to stay. Other decisions reaffirmed it.⁵ And contemporaneous legislation expressly permitted removal of a justice of the peace "when his office 'is' lawfully abolished or merged in the jurisdiction of some other justice" (sec. 206 Rev. Adm. Code); whereas it *impliedly prohibited* such removal (by abolition) of judges of first instance, because without mentioning abolition or merger, it directed that they "shall serve until they reached the age of 65 years, subject to the transfer provided for or authorized in this Act" (from one district to another). (Sec. 149 Rev. Adm. Code.)

And when the Constitution was adopted in 1935, the Government practice of retaining judges in judiciary reshuffles, the statute and the jurisprudence all combined to flower into sec. 9, which with sec. 7 assured judges stability of tenure, so long as they behave, until they reach seventy or become incapacitated.

^{3a} They were at first appointed to hold office during the pleasure of the Philippine Commission (Act 136).

⁴ *Borromeo v. Mariano*, 41 Phil. 322.

⁵ *Concepcion v. Parodes*, 42 Phil. 599; *Alberto v. Nicolas*, 51 Phil. 370.

Wherefore, if constitutions are "expounded in the light of conditions existing at the time of their adoption, the general spirit of the times and the prevailing sentiments among the people" (11 Am. Jur. 676-678) it should be easy to conclude, from the circumstances herein-above depicted, that the Convention did not contemplate—nay, it frowned on—removal of judges of first instance thru abolition of their offices or reorganization.

The Constitutional Convention wanted judges unafraid to lose their jobs or their salaries, unmoved and unswayed by any considerations, except the trepidations of the judicial balance. Professor Jose Aruego, a member of the Convention, wrote thus:

"The Convention included in the Constitution provisions for helping secure the independence of the judiciary. By express provision of same, the members of the Supreme Court and all judges of inferior courts shall hold office during good behaviour, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office." Consequently, *during good behaviour, they may not be legislated out of office by the law-making body nor removed by the Chief Executive for any reason and under the guise of any pretense whatsoever; they may stay in office until they reach the age of seventy years, or become incapacitated to discharge the duties of their office.*" (Aruego, *The Framing of the Philippine Constitution*, Vol. II pp. 718-179 (Underscoring ours.)

The Borromeo-Mariano case, memorable in Philippine judicial annals spearheaded perhaps the idea of stable tenure for our judges, with these words:

"Our conception of good judges has been, and is, of men who have a mastery of the principles of law, who discharge their duties in accordance with law, who are permitted to perform the duties of the office undeterred by outside influence, and who are independent and self-respecting human units in a judicial system equal and coordinate to the other two departments of government. We are pleased to think of judges as of the type of the erudite Coke who, three centuries ago, was removed from office because when asked "if in the future he would delay a case at the Kings order," replied: "I will do what becomes me as a judge." (Borromeo v. Mariano 41 Phil. p. 333.)

The paragraph comes from the pen of Mr. Justice Malcolm, who on other subsequent occasions insisted on permanency of judicial office-holders. This litigation now raises the question,

Shall we have judges of the type of Lord Coke? Or judges who, in his place, would have answered "I'll do what his majesty pleases," judges who, afraid of ouster thru a judiciary reshuffle, would rather serve the interests of the party in power or of the political boss, than the interests of justice?

As it is, the Judicial Department is feeble enough. Shall we render it feebler with judges precariously occupying their official seats? Judges performing their duties under the sword of Damocles of future judicial reorganizations?

It is argued that "there can be no better guaranty"—for the independence of the judiciary x x x "than the God-given character and fitness of those appointed to the bench." We agree, if the statement means nothing else. But if it infers that the other good guarantees for judicial independence provided for by the Constitution (life tenure etc.) may be discarded, we disagree. The inference would be just as illegitimate as if one theorized that the best guaranty for the independence of a country is the courage of its defenders and therefore all fortifications, tanks, cannons and defense installations etc. may all be suppressed. At any rate the argument evades the issue: the inquiry is not which is the best guaranty, but whether the guaranty of life tenure had been broken on this occasion.

Contradicting petitioners' claim of legislative removal, or dismissal by Congressional action, respondents argue there was no removal from office because the office was abolished.^{5a} However, the plain fact is, petitioners were judges of first instance on June 19, 1954, and because of Republic Act No. 1186 they ceased to be so. They lost their jobs thru the operation of a legislative enactment. They were ousted by Congressional direction, *i.e.*, legislated out.⁶ The effect is what counts. The medium—abolition of their office—makes no difference." We test a rule by its results," (L-3054 & L-3050), as one *amicus curiae* pointed out.

Anyway there must be something fallacious in this method of argumentation. If the petitioners had a five-year lease on a building and after one year the owner destroyed it, will said owner be absolved upon the allegation that petitioners have no rights because the building is gone? Respondents, of course, will differentiate by pointing to the contract, and citing the principle that an office is not a contract. And yet, does a constitutional promise of tenure entail a lesser obligation than a private contractual duty?

Call it reorganization, or legislation or removal or abolition, this law disregards the constitutional assurance that these judges, once appointed, shall hold office during good behaviour etc. For such breach they may complain, and they do complain.

The abolition of their offices was merely an indirect manner of removing these petitioners. Remember that on June 19, 1954, there were 107 judges of first instance, district judges, judges-at-large and cadastral judges (Rep. Act 296).^{6a} After the passage of Republic Act No. 1186 there were 114 positions of judges of first instance. There was no reduction—there was increase—in the number of judges, nor in the number of courts. The positions of Judges-at-Large and Cadastral Judges

^{5a} Story on the Constitution criticizes this at p. 178 53 S.W. Rep.

⁶ Judges "may not be legislated out of office." (Aruego, Framing of the Constitution, Vol. 2, p. 719.

^{6a} 74 district judges, 18 judges-at-large, 15 cadastral judges.

were eliminated; but *they were in fact substituted* or replaced by other positions of judges; or if you please, there was a mere change of designation from "Cadastral Judge or Judge-at-Large" to "district judge". Hence it should be ruled that as their positions had not been "abolished" de facto, but actually retained *with another name*, these petitioners are entitled to remain in the service. (*Brillo v. Enage*, G.R. No. L-7115, March 30, 1954.) For it is not permissible to effect the removal of one judge thru the expediency of abolishing his office *even* as the office with same power is created with another name. (*Brillo v. Enage*, *Malone v. Williams*, 118 Tenn. 391, *Gibbe's Case* 4 A.L.R. j. 211). In this view of the picture, we believe, Congress could have, and should have—as suggested by Secretary Tuason during the hearings in Congress—directed in said Republic Act No. 1186 that "the present judges-at-large and cadastral judges shall become district judges presiding such districts as may be fixed by the President with the consent of the Commission on Appointments"; or by the Secretary of Justice, as originally proposed by Senator Laurel in connection with the same bill. Something similar was done before,⁷ and it would not be objectionable as an encroachment on the President's prerogative of appointment, because such judges had already been appointed to the judiciary before the passage of the act, and the provision may be construed in the light of mere change of official designation plus increase in salary. As the Secretary of Justice remarked during the hearings of the House, these judges-at-large should have been appointed to the districts:

"Mr. Veloso (I). But suppose the bill as now proposed intends to abolish the judges-at-large and cadastral judges, would you think that this bill is unconstitutional?

"Sec. Tuason. Well, that is why I say,—in order to prevent the bill from being unconstitutional, the abolition must contain the proviso that these judges are not to be lusted, they are not to be re-appointed but they are to continue as district judges and their districts are to be determined by somebody or by the Department of Justice." (Transcript of hearing on March 17, 1954 of the Committee on Judiciary, House of Representatives.)"

That this act was intended to remove judges is attested by the following statement of Congressman Arturo Tolentino, co-author of the measure, and majority floor-leader, during the debates of the House:

"I am frank enough, Mr. Speaker, and I will not be hypocritical to say that in this bill we are not going to weed out undesirable judges. We are. That is the purpose of the bill. There are judges who are undesirable and must be weeded, and in their places must be placed good judges who, after having been appointed to a particular district cannot later be removed or transferred from one district to another. In other words, to eliminate a bad system, we are going to use this remedy." (*Lawyers Journal*, issued on July 31, 1954, p. 357)."

⁷ Act 3911 sec. 4.

This suggests another line of thought. Abolition of their offices amounted to the petitioners' removal. As Congress has no Constitutional power to remove judges by direct action, therefore it must be denied power to do indirectly what it could not do directly. Indeed, those who uphold this law would make the Constitution prescribe that judges "shall hold office during good behaviour until they reach the age of seventy or become incapacitated or are removed by Congressional action or their offices or courts are abolished."

Again, on the matter of removal, the Constitution having enumerated causes for cessation of judges, the principle "express mention implies exclusion of others" supports plaintiffs' side.

"Ordinarily the enumeration of specific matters in a constitutional provision is construed as an exclusion of matters not enumerated, unless a different intention appears." (16 C.J.S. Constitutional Law p. 61).

This leads to the allegation that the removal of petitioners was not intentional, and therefore no breach of the Constitution may be imputed to Congress. In the face of the end-product—ouster—we may declare it was unintentional, if (1) Congress did not know cadastral judges and judges-at-large would be ousted or (2) knowing such consequence, Congress found it necessary to approve the law (as it is now) to fulfill its purposes. The first alternative would be contrary to the facts; it would even be unflattering to Congress, for it would imply they didn't know the contents of the bill. The second alternative can not be true, because the objectives of the law could be carried out without shortening the judges' life-tenure, by directing their conversion into district judges or ordering that abolition of their respective positions shall be effective upon termination of their respective terms.

Respondents' reply will probably be something of this tenor: Congress did not know the President would not re-appoint petitioners. Granted, arguendo. But Congress knew the judges were eased out, by the letter of the law. *Maybe it hoped* they would be saved by re-appointment from the President. Now, when a man shoots another, could he plead lack of intent, because he expected the doctor would have his victim?

Far be it from us, to imply that Congress *maliciously* decreed the removal of judges. All we say is, it acted intentionally, with full knowledge, albeit in the belief *it had constitutional power to act* as it did.

But, the respondents, argue, had these petitioners been appointed district judges by the President after the passage of Republic Act 1186, they would not complain; wherefore, their grievance could not be against the passage of the act, but against their non-appointment, and one who has not been appointed has no cause of action. Clever piece of thinking, to be sure. However, except for the objected law, petitioners would still be judicial officers, at large or cadastral, but judges of first instance.

They do not pretend to be district judges, nor seek to be promoted as *district judges* by presidential appointment.

At any rate this is no debate on *who is* responsible for their ouster, the President or the Congress. The stubborn fact stands out: owing to the statute in question, petitioners find themselves ejected from their judicial seats. They seek a remedy, because the fundamental law promised they shall hold office during good behaviour until they reach seventy.

Ubi jus, ibi remedium—the section of the statute causing their untimely cessation should be invalidated.

In this connection, the possibility has occurred to us of construing sec. 3 of Act 1186 as effective only upon the cadastral judges and judges-at-large vacating their respective positions either thru resignation or thru resignation or thru the causes enumerated by the Constitution. That would be mere *interpretation*, and as no declaration of invalidity is required, seven votes would suffice. However, we realized that such *interpretation* would be unjustified, because the law clearly contemplates immediate cessation of said officers, as evidenced by the provision for pension of those who are not retained by appointment as district judges; and it is more important to be right than to carry the day. Wherefore the constitutional issue has to be squarely met.

Our view on this question of abolition are not inconsistent with *Manalang v. Quitoriano*, 50 Off. Gaz. p. 2515, wherein the Director of the Placement Bureau lost his position when it was reorganized into the National Employment Service, headed by a Commissioner. There the constitutional issue hinged upon the right of a civil officer not to be "removed or suspended except for cause as provided by law." Contrary to what is believed in some quarters, judges have broader and stronger guarantees of tenure than ordinary civil servants. They have *in addition* the privilege to hold office "until he reaches 70 years of age, or becomes incapacitated." Besides, the underlying consideration must be borne in mind that *Manalang belonged to the Executive Department*, and because the President approved the law, no question or encroachment by one branch on the other could be apprehended or alleged.

Comments on Prevailing Opinion.

According to the prevailing opinion (of four justices) the respondents' position is sustained by one decision in Tennessee, two decisions in New Jersey and one in Kansas, one in Alabama—plus *Brillo v. Enage* of local concern. We are sorry to state that one of them should have misled our distinguished colleagues.

McCulley v. State (Tenn) 53 S.W. Rep. 134, 46 L.R.A. 567 is a three-to-two decision. And the case is not persuasive here, because—unlike ours—the Tennessee Constitution *explicitly permitted* the As-

sembly to remove the judges for cause by two-thirds vote. (See page 135, 53 S.W. Rep.)

And one of the three justices sustaining the abolition-removal rested his vote on the express constitutional power of the legislature to remove for "cause", said justice (Wilkes) having found it to be good cause "that there is not sufficient business to require the retention in office of the official etc." (McCulley v. State 53 S.W. Rep. at p. 153.) Such power of removal actually tipped the judicial balance in that Tennessee controversy.

The dissenting opinion of Chief Justice Snodgrass, forceful, erudite, and supported by authority, contains a detailed exposition of the history and importance of judicial independence, the struggles to establish it, the intention of the framers of the Constitution in providing for life-tenure of judges. It apparently failed to impress his fellow-members, because that Tennessee Court had previously acknowledged "that the independence of the judicial department (there) was only a *fiction of law* and that it could not exist without the assent of the Legislature" (McCulley v. State 53 S.W. Rep. at p. 167). But certainly his luminous dissent, if read carefully and patiently, should convince judges of democratic countries wherein judicial independence is *not a fiction of law*, but a reality to be cherished and treasured.

And yet, not everything is hopeless under Tennessee's legal system. Some decisions there before and after the McCulley precedent maintain the view that *a statute is unconstitutional where it abolishes the office of the judge without abolishing the court over which the judge presided* [State v. Link 111 S.W.W. Rep. (2d) p. 1024; State ex rel. Bailey v. Mabry 178 S.W. Rep. (2d) 379].

Right here is where respondents' line of defense is decisively dented, because Rep. Act 1186 did *not abolish any court of first instance* and yet it abolished the offices of several judges of first instance. Herein lies the pivotal feature of this debate. It should be emphasized that the signers of this dissent would find for petitioners principally upon this particular defect of the legislation at stake, coupled with the admitted circumstance that instead of reducing the number of judges the act increased it, with seven additional ones.

The two New Jersey cases are not conclusive, because the Constitution of that State—unlike ours—*expressly authorized* the Legislature to abolish courts and to remove judges. It says after authorizing the creation of lower courts,

"x x x which inferior courts the Legislature may alter or abolish as the public good shall require." (See 37 Atl. Rep. p. 68.)

It has also provisions similar to Tennessee's about the removal of judges.

As to *Brillo v. Enage*, precisely, it upholds judicial tenure against legislative ouster. There were some obiter dicta, which of course are not binding.

In *Aikman v. Edwards* (Kan.) the Legislature transferred the counties of the 26th. district to the thirteenth district thereby indirectly abolishing the former. But the judges were not affected, because the act provided that "it should not be construed so as to deprive any judge of his salary." The case is no authority against petitioners.

In the *Cherokee County* case (Alabama) the Constitution there gave the Legislature express power to abolish any court, except the Supreme Court.

In a footnote at pages 91-92 of his work on *Constitutional Limitations* (8th Ed. Vol. 1), Judge Cooley summarized briefly the law on this subject as follows:

"Where the legislature is empowered to remove judges for cause, (but is required to give notice and opportunity to appear, this imports that the cause shall be one personal to the judge, and he cannot be removed merely to cut down expenses. But if his court is one which the legislature is authorized to ordain and establish the legislature may abolish the court, and the judge's office and salary will thereupon cease. *McCulley v. State*, 102 Tenn. 509, 53 S.W. 134, 46 L. R. A. 567."

"That all the territory of one judicial district may be distributed among other districts or annexed to one district, and the judge thus deprived of office, see *Aikman v. Edwards*, 55 Kan. 751, 42 Pac. 266, 30 L. R. A. 149; but this cannot be done where the judge's term of office is fixed by the Constitution. *State v. Friedley*, 135 Ind. 119, 34 N. E. 872, 21 L. R. A. 634."

The above three cases were obviously the most important on the question at issue. As explained, *McCulley* is not conclusive and *Aikman* saved the salary of judges. Therefore *Friedley*, supported by other American decisions as hereinbefore demonstrated, should shape our resolution in this controversy.

Respondents in their second ground of defense maintain that, as the positions of judges-at-large and cadastral judges are unconstitutional, their abolition gives rise to no cause of action.

They cite section 7 of Art. VIII^a and argue that as such judges have no permanent residence and could be designated from province to province by the Secretary of Justice their positions "violate the spirit if not the letter" of said section and article.

In the first place, the principle seems to be undisputed that a law may not be declared unconstitutional for mere violation of "the spirit" of the Constitution.^b

^aNo judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court. x x x.

^b"Nor are the courts at liberty to declare an act void, because in their opinion it is opposed to a spirit supposed to pervade the Constitution, but not expressed in words." (Cooley, *Constitutional Limitations*, Vol. 1 p. 351 (8th Ed.))

In the second place, the section refers to district judges—not to other judges. If it be contended that the constitution implicitly contemplated district judges *only*, then positions of justices of the peace or justices of the Court of Appeals would be unconstitutional too. As a matter of fact, the wording of the section, "No judge *appointed* for a particular district" etc. allows the inference that there are judges *not appointed* for a particular district—like auxiliary judges or judges-at-large of which there were fifteen (Act 2107) at the time of the Convention, and of which the members of the Convention were necessarily cognizant.

Thirdly, as the fundamental objection is to their ambulatory character, the solution should be to stop such transferability—not to outlaw their offices.

Lastly, this ground of defense may not be upheld, unless approved by two-thirds of the Supreme Court, necessitating as it does, a declaration of unconstitutionality of a statute. In the absence of the necessary vote, the positions of judges-at-large and cadastral judges must be regarded valid to all intents and purposes.

And now, what is the effect of the votes denying relief to petitioners expressly upon the ground of unconstitutionality of their official positions? May a justice validly rest his vote in a given case upon his lone personal opinion of unconstitutionality of a statute?

Suppose a person is prosecuted for violation of the Import Control Law. The facts proven fall clearly within the statutory prohibition. Five justices vote to convict, but six justices, accepting the facts vote to acquit upon the ground of unconstitutionality of the statute. Will the accused go to jail or will he be released? Remember there are six votes of acquittal; but six votes are not enough to declare a statute unconstitutional. The hypothesis opens up interesting avenues of thought. . .

Recapitulation.

To restate our position briefly:

- a. The offices of judges-at-large and cadastral judges do not contravene the Constitution;
- b. The Legislature's express power to establish courts inferior to the Supreme Court implies power to abolish courts so created;
- c. Such implied power, however, may not be used to abridge the tenure of incumbent judges, except, perhaps, during war hostilities or other clear national emergency;
- d. Even granting the power to abolish courts implies the power to abridge the tenure of judges during normal times, where no court is abolished or the number of judges is not decreased, the Constitutional tenure is violated by the abolition of some judge's offices and their removal;

- e. As Republic Act 1186 did not abolish any court and did not reduce the number of judges, sec. 3 of the Act easing out herein petitioners is unconstitutional and void.

In reaching the above conclusions we have not overlooked the good intentions expressed by prominent legislators during the debates on the bill. They approved it, we understand, avowedly for a three-fold purpose: (a) to increase the compensation of judges; (b) to have only one kind of judges of equal category and salary; and (c) to do away with the *rigodon de jueces*. These are indeed praiseworthy objectives, which the judiciary sincerely appreciates. Yet the advantages brought about should not blind us to the ensuing dangerous encroachment on judicial independence. This independence should be defended at all cost, for it is written that impartial justice cannot be adequately administered unless judges perform their duties in an atmosphere of perfect freedom from the fear of losing their offices or their salaries or their districts so long as they obeyed the law and the bidding of their conscience.

Our vote is to grant the relief prayed for.

Pablo, Jugo, Concepcion, and J. B. L. Reyes, JJ., concur in this opinion of Mr. Justice Bengzon.

MONTEMAYOR, J., concurring:

I concur in the learned and exhaustive opinion of Mr. Justice Bengzon. I only want to emphasize and set in bolder relief certain aspects of the case, particularly the security of tenure of office of a judge and the stability of his position, which both go to maintain the independence of the judiciary. That independence is not only vital but also necessary and indispensable in a democratic and constitutional form of government, and the framers of the Constitution clearly realizing this, inserted in that instrument a provision fixing the tenure of office of a judge and forbidding the decrease of his salary. Not content with this, they even prescribed and defined the only causes for removal of a judge or his cessation in office. Only through his own misconduct, his incapacity or his attaining the age of 70, is he to lose said office. There is no other ground. It is clear, therefore, that the Legislature may not through the enactment of a law, add to the grounds of removal prescribed in the Constitution, such as the abolition of a judicial office thru reorganization, which results in a judge ceasing in office. That is an indirect removal.

Why did the Constitution or its framers so solicitously, and in detail provide for the security of tenure of judges and their removal only on certain specific grounds? The reason is not hard to find. It was to make the office and the person occupying it independent and free from all outside influence and pressure.

Compared to other public functions and duties, the dispensing of justice, besides being extremely important, is both delicate and singular.

To sit in judgment over your fellowmen, pass upon their controversies involving their rights and fortunes, and in criminal cases determine their innocence or guilt, which decision directly affects and involves their freedom, their honor, even their lives, is no ordinary chore or business. It is a serious task, weighty, and fraught with grave responsibility and of far reaching effects, a task, earnest and solemn almost partaking of the divine. The framers of the Constitution naturally wanted the person exercising that judicial function to be absolutely impartial and independent minded so that the parties before him obtained and received justice based only on the merits of their claims and defenses, regardless of the power and influence of the parties and other people interested in the case. But realizing the imperfections and frailties of man and not trusting to his honesty and integrity alone, the Fathers of the Constitution erected, as it were, around the man who judges his fellowmen a wall of safeguards and restrictions, high and firm, in the form of security of judicial tenure and of a salary that cannot be decreased, assuring him that as long as he behaved, he could well afford to utterly disregard outside influences and pressure, even antagonize and defy those seeking to exert it, because they cannot do anything to him as regards his office and its emoluments. With that constitutional assurance and guarantee a Judge may well decide his cases with an eye single and only to their merits. He is assured that as long as he behaves, he may continue in office until he is incapacitated or reaches the age of 70. In other words, his continuance in office as a judge rests entirely in his own hands, on the passage of time, and in the hands of Divine Providence, the last two of which are beyond human control. Neither the Chief Executive nor the Legislature, not even the highest court of the land which may pass upon and revoke his actuation, can touch him. Under all these conditions and atmosphere, conducive to judicial impartiality, the parties in a case, in turn may rest assured that however humble and lowly and poor they may be, and regardless of the wealth, power and influence of their adversaries, they may and would still receive justice.

A judicial post is not a position that is occupied by an incumbent, casually, indifferently or temporarily. Because of its stability and the fact that it is comparatively well-remunerated, one occupies it with considerations and in a spirit of permanence, intending to make its functions his life work and to stay in it until the age of retirement. As a rule, justices of the peace in the towns and even Judges of First Instance grow grey in office and carry on until they reach the age limit. Lawyers and fiscals prepare for and aspire to the post of a judge of First Instance as a life career, with an eye to possible promotion to the Court of Appeals or to the Supreme Court. In other words, they, more often than not, are career men who intended and want to stay in the judiciary as long as they can. Naturally, they are much and

vitaly interested that their tenure of office be strictly and fully respected, maintained and secured. The Constitution rightly and properly gives them this assurance. With this guarantee, they, as judges, are in a position to administer justice without fear or favor and dedicate themselves entirely to their judicial work. But the moment they have reason to believe and they are made to realize that although their salary cannot be decreased nor can they be removed from office during good behaviour, still, their posts can be abolished and they can be made to cease as judges, then that sense of security and independence is shattered. In such a situation, what assurance have the parties to a case before a Judge that in deciding it he is not influenced by other factors besides the merits of the case? This, specially if one of the parties involved or his counsel, is in a position to sponsor and work for the enactment of a law abolishing his position.

There can be nothing more destructive of the morale of judges and their sense of security and independence than the possibility or threat of their removal, not thru their own fault and after legal processes, but by the indirect method of abolition of their posts by means of judicial reorganization. Such indirect removal brings to a rude and sudden end their life career, that which for many years they had patiently and thru sacrifices been striving for and finally achieved. Under such circumstances, and in that precarious situation, some judges, thoroughly disillusioned, may resign and step out gracefully before being legislated out and notified by the Department of Justice that they have ceased in office, and so should vacate it, and consider the whole thing as a mess and a sorry business and rue the day that they aspired to and trained and worked for a judicial career. Others, determined to stay in the judiciary and unwilling to lose their posts without doing anything about it, may seek help, and approach those in a position to prevent or frustrate the threatened or impending abolition of their posts, or failing in this, see to it that they are retained in the service or are absorbed and re-appointed in the new judicial setup. From then on, could we still say that there is security of judicial tenure, and that we have an independent judiciary?

There was a time in England when the judge held his judicial office at the pleasure of the King who appointed him. The result was that the judiciary was subservient to the Crown that made and unmade judges. Only with the establishment of the tenure of good behaviour was the independence of the judiciary achieved.

We can have no independent judiciary if judicial tenure may be shortened or destroyed, by legislative reorganization, however well intentioned and well meant. There is real and grave danger of the judiciary eventually being subservient to a Legislature that thru abolition of judicial posts by means of a judicial reorganization can unmake judges.

And how could a Judiciary, which under a constitutional form of government, is supposed to act as a check against the Legislature for any violation of the Constitution, do so when such Judiciary is subservient to the Legislature it is supposed to check? To me, the legislative abolition of judicial positions resulting in the removal of judges, without said judges being absorbed in the judiciary, is an open violation of the constitutional provision on the security of judicial tenure, and if allowed, would "toll the knell" of an independent judiciary. It would be pulling down the judicial officer from the high pedestal of independence and security on which the Constitution has placed him,—the pedestal from which he has been dispensing justice, above, unaffected by and free from the influence, prejudices, machinations and passions, raging below him.

It is claimed that rather than the security of tenure of a judge, it is his honesty and integrity that is the best guarantee for the dispensing of real justice, and that so long as our judges are honest and upright, there is nothing to fear. We could admire such ingenuousness and naivete; but the framers of our Constitution, less naive and more practical minded, apparently thought otherwise, and believing that judicial honesty and courage were not enough, proceeded to safeguard a judicial office with security of judicial tenure during good behaviour, the very thing which we are endeavoring to uphold and protect against what we believe is a legislative interference and invasion.

A great jurist once said that a judge shall know everything about the case, but nothing about the parties. That, perhaps was the reason or one of the reasons why Justice is symbolized by a lady holding the scales in one hand and the sword on the other, with a bandage over her eyes—meaning that to her the merits and only the merits of the case as weighed in the scales are everything, and the parties thereto are nothing, to be utterly disregarded and ignored. But if as in the present case judges are made to realize that they may be legislated out of office under the guise of a well-intentioned reorganization, could we blame the lady with the scales and the sword, if as a measure of precaution and so as not to jeopardize her tenure of office she would now and then peep thru the bandage over her eyes and see if, in case of an adverse decision, any of the parties before her are in a position to work for a reorganization and eventual termination of her tenure of office or, in case of a favorable decision, to help frustrate the threatened reorganization or if carried out, to work for her retention in or reappoint to the judiciary in the new judicial set up.

It is contended that if the Legislature by means of a law may abolish an executive office like the Placement Bureau, even if it results in the ousting of the head of said bureau (see the case of *Manalang vs. Quitoriano*, 50 O.G. p. 2515) there is no reason why the same Legis-

lature may not by means of the Judiciary Act (Republic Act 1186) abolish the position of judges-at-large and cadastral judges even if by said abolition the incumbents were separated from the judiciary. But there is a vast difference. In the case of the abolition of the Placement Bureau, resulting in the ouster of its chief, the only constitutional provision protecting the tenure of office of a civil service employee like him is that he may not be removed except for cause as provided for by law (Section 4, Article XII of the Constitution). Under said constitutional provision the Legislature may enact a law providing for causes for removal of a civil service official or employee; and the abolition of his office may properly be regarded as one of the causes of removal, separation and cessation in office. In the case of a Judge, however, as I have already stated, the Constitution prescribes and defines causes for removal or cessation in office of a judge, and the abolition of judicial office is not one of them. The provisions of the Constitution on this point are clear. "The members of the Supreme Court and all judges of inferior courts shall hold office during good behaviour until they reach the age of seventy years or become incapacitated to discharge the duties of their office." It does not contain a phrase such as "or until their office is abolished by the Legislature." And so, altho the Legislature by enacting a law may ordinarily provide for the abolition of a judicial office, it may not provide that abolition as a cause for removal of a judicial incumbent. Otherwise, to what avail is the constitutional guarantee of non-diminution of salary and judicial tenure, to a Judge, if the Congress by a stroke of the legislative pen, could sweep away his salary, tenure and all.

The present judicial reorganization under Republic Act 1186 has the effect of ousting 33 judges of first instance (18 as judges-at-large and 15 as cadastral judges). Without any fault on their part, without any charges of inefficiency, misconduct, corruption or incapacity, and before reaching the age limit, they are made to cease as judges. They were merely notified by the Department of Justice that they were to cease from their office on a certain day. If this right of unlimited and unrestricted judicial reorganization by the Legislature is allowed, what is to prevent Congress this year, even with the best of intentions, from effecting another judicial reorganization, say, converting the present District Courts into Circuit Courts and declaring the positions of the present 114 district judges abolished and requiring new appointments and confirmations to whatever number of circuit judges are created by the new reorganization law? Thereafter, what is to prevent the same Congress or the next Congress from effecting another judicial reorganization and converting the circuit courts already mentioned into say, Provincial Courts or Courts of Judicial Areas No. 1, No. 2, No. 3, etc., similar to the system of Military Areas for our Armed Forces, or any other judicial

system that the Legislature may think of, and in each reorganization, abolishing the courts or offices to be reorganized and requiring new appointments and confirmations? Where would the security of judicial tenure and independence of the judiciary then be?

If that is the law, if judges may freely and at any time be legislated out by means of a reorganization, then we might as well expunge from the Constitution section 9, Art. VIII, as unnecessary, absurd and useless, nay, more than useless, because it is misleading and deceptive, giving judges a false sense of security and independence, and the people, particularly parties in court, false hopes and expectations of receiving real justice in an independent judiciary which is really not independent, and from judges supposed to be unafraid and immune to influence or pressure, but who in reality have reason to be afraid to lose their office at any time the Legislature thinks up and enacts a judicial reorganization.

If that is the law, then the members of the Constitutional Convention have gravely blundered into building what they intended to be a permanent and lasting independent judiciary on the sands of the desert or of the foreshore, easy prey and subject to wind and wave. But to me that is not the law, or the way the constitutional provision should be interpreted. That could not be the result of the prolonged efforts and labors of those who wrote and signed that instrument. Properly interpreted I believe that thru section 9, Article VIII, they really built an independent judiciary on solid rock that can withstand wind and tide, with judges who can afford to be independent minded and fearless because not even the most hostile Legislature or the strongest administration may touch, much less destroy their tenure of office.

As already stated, the present reorganization resulted in the ouster of 33 judges-at-large and cadastral judges. If the purpose of the reorganization was merely to improve or correct an error in the judicial system, then the 33 judges could well have been retained without any new appointments because they could properly be absorbed and fitted into the new judiciary set-up. But if the purpose of the reorganization was to weed out and remove undesirable and corrupt judges, why confine the reorganization to judges-at-large and cadastral judges and leave untouched district judges? Does it mean or did the Legislature believe that corruption existed only among judges-at-large and cadastral judges? Even so, reorganization is neither the remedy nor the process provided by law for that purpose. Congress may not sit in judgment over judges and declare some of them innocent and others guilty, and the latter to be removed. The law expressly provides a procedure for the removal of judges. If accused of misconduct, proper charges should be filed against them and they will be accorded a chance to answer, and above all must be given their day in court to defend themselves before the person designated to investigate them and only if found guilty may they

be removed, by the Chief of the Executive Department (President), not by the Legislature, and only upon the recommendation of the Supreme Court.

It is also claimed that in the case of the judges affected, particularly the 10 petitioners herein, there has been no removal from office because their positions were abolished, and so the incumbents cannot be said to have been removed from an office which no longer existed. That sounds very much like a landlord who, unable through due process of law, to remove or eject an undesirable tenant from a house being rented, proceeds to tear down the building from under, and around the hapless tenant, and later when charged with arbitrary and illegal ejection and removal of the tenant from the premises, sophistlike speciously argue that there could have been no ejection or removal of the tenant from the house because there no longer was any house from which to eject or remove.

It is finally asserted and with earnestness, that the positions of judges-at-large and cadastral judges are without the provisions of the Constitution because the residences of the incumbents are not fixed by Congress as required under section 7, Article VIII; consequently, said position may be abolished freely and without any hindrance for the reason that Congress in abolishing them under Republic Act 1186, was merely correcting a sort of legislative error in having created such judicial positions without fixing the residences of their incumbents, and that the guarantee of judicial tenure is not extended to such judges without a fixed residence. I regret my inability to subscribe to this proposition. If the purpose was merely to correct the error of lack of residence, then why not just fix the residence of each judge-at-large and cadastral judge and provide that as in the case of District Judges, he may not be sent or assigned to a district outside his residence to try cases, without the approval of the Supreme Court? Why penalize judges-at-large and cadastral judges with indirect removal and cessation in office for an error of the Legislature? If this may be legally done, then we would be sanctioning a judge being legislated out of office by the abolition of his post, not because of any fault on his part, but only because of the fault of the Legislature in having forgotten to fix his residence. That sounds neither just nor fair. But it is much more than that. Under this proposition, one who accepts a judicial office does so under a caveat, a sort of notice, caution or warning that if at any time, the Legislature or the courts find any constitutional error, flaw or imperfection in the creation of his office, then it may be summarily abolished because it does not enjoy the security of judicial tenure. In other words, he is expected to be a constitutional expert or specialist and at his peril, first determine the constitutionality of the law creating the position he is accepting, because if he is wrong, and said posi-

tion is later found to suffer from some constitutional imperfection, he may lose it. In that case a person accepting a judicial position with all candor and confidence, still can never feel safe or secure in his office, unless perhaps he has friends to help him. It is that very feeling of uncertainty and insecurity that the Constitution has guarded against by means of the security of judicial tenure, so that a judge may always feel secure and independent and can afford to be fearless.

In one of the separate opinions in this case, it is asserted that in abolishing the posts of judges-at-large and cadastral judges the Legislature was merely seeking as a remedy for the anomalous situation of judges without any fixed residence being sent around to try specific cases, under which system pernicious politics is said to have influenced the administration of justice; that the abolition of judicial posts effected was merely the painful amputation of a gangrenous appendage which was poisoning the judicial system, not unsimilar to the cutting and casting of the guilty hand or foot in the biblical reference. One can have no quarrel with the painful operation mentioned, but why put the pain on the judge guiltless of the anomaly, and dismember him when he and his person are without fault or sin? We should not confuse the judicial system with the judicial personnel. If there is to be a general repair or remodeling of the judicial house in order to remove the filth inside, by all means let us have it; but one is puzzled if not intrigued why after all these operations, the old tenant who had behaved well, paid his obligations religiously and observed the law, and who was never responsible for the hazards nor the filth removed is not kept in or restored to the house after the repair and house cleaning, but instead he is left in the street and a new tenant is installed in the house repaired and cleaned.

In conclusion I hold that the abolition of any judicial office or post which results in the ouster of a judge is illegal and unconstitutional because the Legislature cannot do something indirectly—removing a judge—which it cannot do directly. The only instance I can imagine wherein a judicial office of district court could be legally abolished resulting in the ouster of the incumbent is where such a district or territory disappears as a result of some seismic or volcanic eruption or upheaval and sinks into the sea and disappears, or where such district is ceded to another nation or country as a result of war, in which case the judicial incumbent of the district having no territory or district over which to exercise his judicial functions may well resign, retire and give up his position which materially and physically has ceased to exist. But in such a case, the abolition of the office was not due to any act or will of his fellow men, but was due to force majeure and the act of God, and against this, there is no judicial remedy.

BAUTISTA ANGELO, J.:

This case involves a clash of two important provisions of our Constitution: one which gives to Congress the power to create, abolish, and reorganize our inferior courts, and the other which guarantees to the incumbents a definite tenure of office. The issue is of paramount importance for, irrespective of its effect on the parties affected, it may mean the consecration of the principle which underlies the independence of the judiciary or the opening of the door of congressional interference which, no matter how lofty its purpose, may spell its destruction. These two provisions are apparently conflicting or contradictory, but because the prevalence of one may mean the repudiation of the other—a situation not certainly intended by the framers of our Constitution—it is the bounden duty of this Court, by applying sound rules of statutory construction, to seek the way by which they could be harmonized and be given force and validity to accomplish the vital purpose which they intended to serve.

The issue requires an inquiry into the scope and meaning of the provisions of Section 1 and 9 of Article VIII of our Constitution. Section 1 provides that "The judicial power shall be vested in the Supreme Court and in such inferior courts as may be established by law." Section 9, on the other hand, provides, among others, that "all judges of inferior courts shall hold office during good behaviour, until they reach the age of 70 years, or become incapacitated to discharge the duties of their office." What is the meaning, extent, and scope of the power of Congress to establish inferior courts? Does it mean that the power to create carries with it the power to abolish, and if so may terminate the term of office of the incumbent judge contrary to the letter and spirit of our Constitution? When does the power to reorganize end and the tenure of office begin?

Three different theories had been advanced as regards the power of Congress to abolish an inferior court and terminate the tenure of office of the judge presiding over that court. Some American courts entertain the theory that Congress may abolish an inferior court because of the principle that the power to create carries with it the power to abolish, and that this power may be exercised without any restriction in the sense that, once the court is abolished, any unexpired term of the incumbent judge is deemed terminated (*Cherokee County vs. Savage*, 32 So. 2d., 803). The second theory is that although Congress may abolish an inferior court it can not however do so when its effect is to terminate the tenure of office of the incumbent judge because such tenure is guaranteed by the Constitution (*Commonwealth v. Gamble*, 62 Pa., 343). And the third theory entertains the view that Congress may abolish a court and terminate the unexpired term of the judge provided that the abolition of the court is done in good faith.

"If immediately after the office is abolished another office is created with substantially the same duties and a different individual is appointed, or if it otherwise appears that the office was abolished for personal or political reasons, the courts will intervene." (Garvey v. Lowell, 199 Mass. 47, 85 N. E. 182, 127 A.S.R. 468; State v. Edwards, 40 Mont. 287, 106 Pac. 695, 19 R.C.L. 236.) Which of these theories should be adopted by this Tribunal?

The first theory is unsound because it destroys the independence of the judiciary and constitutes a direct attack against the tenure of office guaranteed by our Constitution. It is obnoxious because it places statutory courts at the whim and mercy of Congress. This theory subverts the foundation stone on which the stability of a constitutional form of government is based. It would spell the doom of democracy and mark the rise of oligarchy or other tyrannical forms of government. As Chief Justice Snodgrass has aptly said, "The only argument for the preservation of the (judicial) system is its constitutional establishment over and against the power of the legislature to abolish it, when established, during the existence of any term. It is not a question of trusting the legislature not to do it; it is a question of its power to do it, against the positive provision that these courts must exist by the preservative clause vesting in them the jurisdiction when created. No other conclusion meets this difficulty, and no argument has been made or could be made which obviates it." (McCulley v. State, 102 Tenn., 509, 53 So., 184, Dissenting Opinion.)

The second theory, while it respects the tenure of office clause, it however suffers from the infirmity that Congress cannot abolish a court even if unnecessary, or its purpose has been accomplished, simply because of the barrier planted by the tenure of office. This is inimical to a sound and practical government for it would completely tie up the hands of Congress against constructive legislation. This is contrary to the principle that "where there is no court there cannot be any such office as judge of such court," (Perkins v. Corbin, 45 Alabama, 102) because the right to hold an office depends upon the existence of that office. This principle admits of no argument. It is axiomatic. In such a case, tenure of office would only be available as a defense if it is shown that the abolition of the office has been made for personal or political reasons. This would bring us to the consideration of the third theory.

This theory holds that the office of a judge may be abolished by the abolition of the court provided that the office is abolished in good faith. This is the middle ground between the two theories. While it allows the termination of the term of office even if guaranteed by the Constitution, it however warns that that can only be done in good faith, or when necessary because the purpose of the office has ceased to exist.

At times this step may be found necessary in the interest of good government, as in the cases of the Court of Appeals and the People's Court. These courts were created to fill an imperative need and when this was met they were abolished and the incumbent judges swept out of office. No one has lifted a finger pointing to the unconstitutionality of such action. These are instances of abolition of an office of a judge for a good and sound purpose. This power of Congress has been impliedly recognized in the case of *Zanduetta v. De la Costa*, 66 Phil, 615, wherein, although the majority opinion did not pass squarely upon the constitutionality of the Act reorganizing the courts of first instance, however, the concurring opinion of Justice Laurel categorically upheld the constitutionality of said reorganization Act.

"I am of the opinion that Commonwealth Act No. 145 in so far as it reorganizes, among other judicial districts, the Ninth Judicial District, and establishes an entirely new district comprising Manila and the provinces of Rizal and Palawan, is valid and constitutional. This conclusion flows from the fundamental proposition that the legislature may abolish courts inferior to the Supreme Court and therefore may reorganize them territorially or otherwise thereby necessitating new appointments and commissions. Section 2, Article VIII of the Constitution vests in the National Assembly the power to define, prescribe and apportion the jurisdiction of the various courts, subject to certain limitations in the case of the Supreme Court. It is admitted that section 9 of the same article of the Constitution provides for the security of tenure of all the judges. The principles embodied in these two sections of the same article of the Constitution must be coordinated and harmonized. A mere enunciation of a principle will not decide actual cases and controversies of every sort (Justice Holmes in *Lochner vs. New York*, 198 U.S., 45; 49 Low. ed. 937)."

In the recent case of *Brillo v. Enage*, G. R. No. L-7115, promulgated on March 30, 1954, the same power has been upheld with regard to reorganization of the positions of justices of the peace. In that case, this Court expressly recognized the right of Congress to abolish such positions regardless of the judicial tenure of the incumbent, although it declared that the ousted judge was entitled to the position because it found that there has been no actual abolition of the court but merely a change in name and increase in the salary of the judge.

"La segunda cuestion que el recurrido plantea es que la Carta de Tacloban ha abolido el puesto. Si efectivamente ha sido abolido el cargo, entonces ha quedado extinguido el derecho del recurrente a ocuparlo y a cobrar el salario correspondiente. *McCulley v. State*, 46 LRA 567. El derecho de un juez de desempeñarlo hasta los 70 años de edad o se incapacito no priva al Congreso de su facultad de abolir, fusionar or reorganizar juzgados no constitucionales. *Zanduetta v. De la Costa*, 66 Phil. 615; Am. Jur., Pub. Officer, 904-5."

The abolition of the office of the Director of the Placement Bureau is another instance of the power of Congress to abolish an office even

if its tenure is guaranteed by our Constitution. In the case of *Manalang v. Quitarano, et al.*, 50 O. G., 2515, April 30, 1954, petitioner claimed that he could not be legislated out of office except for cause because he was a civil service eligible and his tenure of office was protected by the Constitution, but this Court ruled him out holding that he cannot set up such defense because the office he was holding was abolished. The power of Congress to abolish an office has been upheld.

"This pretense cannot be sustained. To begin with, petitioner has never been Commissioner of the National Employment Service and, hence, he could not have been, and has not been, removed therefrom. Secondly, to remove an officer is to oust him from office before the expiration of his term. *A removal implies that the office exists after the ouster.* Such is not the case of petitioner herein, for Republic Act No. 761, expressly abolished the Placement Bureau, and, by implication, the office of director thereof, which, obviously, cannot exist without said bureau. By the abolition of the latter and of said office, the right thereto of its incumbent, petitioner herein, was necessarily extinguished thereby. Accordingly, the constitutional mandate to the effect that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law." (Art. XII, Sec. 4, Phil. Const.), is not in point, for there has been neither a removal nor a suspension of petitioner Manalang, but an abolition of his former office of Director of the Placement Bureau, which, admittedly, is within the power of Congress to undertake by legislation." (See also *Brillo v. Enage, supra.*)

The foregoing, in my opinion, constitute the most rational and practical interpretation of the two conflicting provisions of our Constitution above adverted to for, while their functions and limits are defined, the way is pointed out by which they could co-exist and harmonize without doing violence to one as against the other. But, has Congress exercised its power in line with this interpretation in enacting Section 3 of Republic Act No. 1186? More specifically, has Congress really and actually abolished the courts which petitioners herein were then presiding upon its approval? Is the abolition of the positions of judges-at-large and cadastral judges a necessary consequence of the abolition of the courts which they were presiding, or is it its purpose merely to weed out their incumbents? Let us make a little digression on the constitution of our judiciary.

In our government set up, the judicial power in the Philippines is lodged in the following public officers: justices of the Supreme Court, justices of the Court of Appeals, judges of the courts of first instance, judges of the municipal courts and justices of peace courts. The judges of the courts of first instance, as may be noted from the different acts enacted by Congress, may be classified into district judges, judges-at-large, and cadastral judges. The judges who are appointed to a particular district and given permanent stations therein are called district judges.

The judges who are assigned to hold court sessions in a judicial district by the Secretary of Justice for such period of time as he may fix are called judges-at-large. And those judges assigned by the Secretary of Justice to render duty in any judicial district but whose functions are limited to land and cadastral cases are called cadastral judges. But this classification is now merely nominal because they exercise the same general jurisdiction in the particular district in which they are assigned to try and decide all kinds of cases that are submitted to them. When presiding the court they are all considered as judges of the courts of first instance. They all exercise the same jurisdiction as prescribed in the Judiciary Act of 1948. Their difference if any only lies in their mobility and in the salaries they receive. (*People v. Mata*, 45 O. G. Supp. 5, p. 180; *Alarcon v. Kasilag*, 40 O. G. Supp. 11, p. 203; Executive Order No. 395, paragraph 3.)

Now, it should be here noted that the judicial system implanted in the Philippines since the American sovereignty is the district system of courts of record. Under this system, the Philippines was divided into several judicial districts and judges were appointed to render duty in said districts, whether they be district judges or otherwise named. At first, district judges, in the exercise of their jurisdiction, were assisted by auxiliary judges, but later the latter were replaced by judges at large. Still later, the positions of cadastral judges were created to try only land and cadastral cases, but later they were also given general jurisdiction. When Republic Act No. 296 was approved on June 17, 1948, known as the Judiciary Act of 1948, the Philippines was divided into 16 judicial districts and the offices of 74 district judges were created. Said Act also created 18 positions of judges-at-large and 15 positions of cadastral judges, thus making 107 all in all the judges of first instance. Then came Republic Act No. 1186, which simply increased the number of district judges to 114 and abolished the office of judges-at-large and cadastral judges, but did not add or diminish the number of judicial districts already existing upon its approval.

It is interesting to note that the number of judicial districts has always been less than the number of the judges assigned to render duty in them, and the approval of Republic Act No. 1186 did not have the effect of abolishing any of the courts in which said judges were presiding over. It can therefore be plainly seen that the enactment of Republic Act No. 1186 merely has the effect of abolishing the classification of judges and not the courts they were then occupying. The positions of judges-at-large and cadastral judges were merely converted into district judges. Applying the principle we have upheld in the case of *Brillo v. Enage*, *supra*, and the third theory which we have discussed above, the conclusion is inescapable that the elimination of the positions of judges-at-large and cadastral judges cannot be done if its purpose is to sweep

out of office the herein petitioners because its effect would be an open infringement of the tenure of office clause guaranteed by our Constitution.

An objection that may be advanced in connection with the third theory is the argument that this Court cannot inquire into the intent and purpose of Congress in approving a legislative measure, nor dispute its propriety and wisdom upon the theory that Congress is in a better position to know the conditions of the country and the needs of its constituents. And this argument is predicated upon the principle of separation of powers. We can hardly argue against this proposition. It is sound and many good reasons based on public interest and sound policy justify it. But like any other rule it is not of absolute application. Cases may arise where the intent of the law is patent and palpable that one need not go into the depth of legislative inquiry to determine its constitutionality, and when such case arises this Court cannot shirk its duty by setting itself behind the cloak of a mere technicality. It is its duty to make the hammer fall whoever gets hurt. Anyway, we are not wanting in legal justification. Mr. Cooley, in his work on Constitutional Limitations (2nd Edition p. 65), says: "When the inquiry is directed to ascertaining the mischief designated to be remedied or the purpose sought to be accomplished by a particular provision, it may be proper to examine the proceedings of the convention which framed the instrument. Where the proceedings clearly point out the purpose of the provision, the aid will be valuable and satisfactory." And this Court has held that "courts can avail themselves of the actual proceedings of the legislative body to assist in the construction of a statute of doubtful import." (*Palanca v. City of Manila*, 41 Phil., 125.)

Let us now take up the issue raised by the Solicitor General that the creation of the positions of judges-at-large and cadastral judges is unconstitutional because it violates Article VIII, Section 7 of our Constitution which provides: "No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court." This proposition is advanced to justify the abolition of said positions and is predicated upon the objection that said judges being assignable to any district or province by the Secretary of Justice contravenes the letter and purpose of said constitutional mandate. I consider untenable this position of the Solicitor General.

In the first place, there is nothing in said provision which would limit the creation of judges of first instance to district judges. It merely provides that a judge appointed for a particular district shall not be designated or transferred to another without the approval of the Supreme Court. The only limitation refers to the residence of said judges whose determination is left to Congress. True, the determination of the residence of the judges-at-large and cadastral judges has been dele-

gated by Section 53 of the Judiciary Act of 1948 to the Secretary of Justice, but in my opinion this does not constitute undue delegation of legislative power. Such matter does not involve rule-making or issuance of regulations having the force and effect of law, nor is it legislative in nature which, under a well known constitutional principle, cannot be delegated unless accompanied by a sufficient standard to canalize the action of the delegate and to avoid the grant of what Justice Cardozo has called a "roving commission." (Schechter v. U.S., 295 U.S. 495.) This is but a mere detail which has to do with the places where said judges have to be assigned which can be delegated for reasons of convenience and necessity.

In the second place, the positions of judges-at-large were introduced in our judiciary way back in 1902 by the Philippine Commission. On May 9, 1902, Act No. 396 was approved creating the positions of four judges-at-large. On September 5, 1903, the Commission enacted Act No. 867, amending certain sections of Act No. 136, but continuing the institution of judges-at-large. These positions were carried over in the various judicial acts approved subsequently, such as Acts 1345, 1708, 1952, and 2038.

On February 28, 1914, the Philippine Legislature enacted Act No. 2347, known as the first Judicial Reorganization Law, wherein the positions of judges-at-large were continued but their names were changed to auxiliary judges. In 1916, the Administrative Code was passed and the provision regarding the positions of auxiliary judges were maintained (Act No. 2657, Section 172). On March 10, 1917, the Administrative Code was revised, but the offices of auxiliary judges were reduced to five (Act No. 2711). On March 17, 1923, Act No. 3107, amending Section 157 of the Revised Administrative Code, was passed, increasing the number of auxiliary judges to fifteen. On December 5, 1932, Act No. 4007 was approved, amending the Revised Administrative Code without touching the provision regarding the auxiliary judges. The Constitution was approved by the constitutional convention on February 8, 1935.

After the adoption of the Philippine Constitution and barely one year after the establishment of the Commonwealth, the National Assembly enacted Commonwealth Act No. 145 wherein it reiterated Section 157 of the Revised Administrative Code of 1917 which provided for the positions of judges-at-large. On August 19, 1938, the National Assembly approved Commonwealth Act No. 348, increasing the number of judges-at-large to twelve. On October 16, 1939, the National Assembly approved Commonwealth Act No. 504 creating for the first time the positions of fifteen cadastral judges. And on May 26, 1940, the National Assembly approved Commonwealth Act No. 545 wherein it affirmed the number of judges-at-large at 12 and cadastral judges at 15 but increased the number of district judges from 50 to 56. And

after liberation, Congress approved Republic Act No. 296 increasing the number of district judges to 74, the number of judges-at-large to 18, and maintaining the same number of cadastral judges at 15.

As may be seen, before the adoption of the Constitution, the positions of judges-at-large, or auxiliary judges, who did not have permanent station but who could be transferred from one province to another upon the designation of the Secretary of Justice, had been in existence for many years. The members of the constitutional convention, as this Court may take judicial notice of, were composed mainly of lawyers and many of them were members of the legislature which operated in the Philippines before and after the adoption of the Constitution. In drafting said Constitution, the members of the convention could not ignore, as they are presumed to know, the existence of said positions and in their deliberations must have borne in mind and duly weighed their propriety and importance in considering the provisions to be embodied in the Constitution as regards the judiciary or the administration of justice in the Philippines, and yet they did not provide anything therein which would prohibit the creation of the positions of judges-at-large or cadastral judges other than declaring that those appointed to a particular district cannot be designated or transferred to another without the approval of the Supreme Court. If that is the only provision they inserted in the Constitution and its framers said nothing in their discussions or deliberations about the practice long observed regarding judges-at-large or cadastral judges, it is preposterous now to presume and much less contend that that law which created said positions is violative of Article VIII, Section 7 of our Constitution. It is therefore crystal clear that contemporary laws and executive practice surrounding the creation of the positions of judges-at-large and cadastral judges point unremittingly to the only conclusion compatible with sound rules of construction that the institution of said positions is not obnoxious, as contended, but rather in keeping with the presumptive will of the framers of our Constitution.

"A constitutional provision must be presumed to have been framed and adopted in the light and understanding of prior and existing laws and with reference to them. Constitutions, like statutes, are properly to be expounded in the light of conditions existing at the time of their adoption, the general spirit of the times of their prevailing sentiments among the people. Reference may be made to the historical facts relating to the original or political institutions of the community or to prior well-known practices and usages." (11 Am. Jr., Constitutional Law, 676-678.)

Having reached the foregoing conclusion, it would seem that Section 3 of the law now under consideration which abolishes the positions of judges-at-large and cadastral judges is untenable if we consider the point of view that the same is not violative of our Constitution. If the institution of said positions is not obnoxious to our Constitution, as I have pointed out above, why then abolish them especially if they

are responsive to a laudable purpose? While all these may be true, I am however of the opinion that their abolition and conversion into positions of district judges which avowedly is the main aim of the present law can be justified considering the reasons that had been advanced in favor of the proposal. One of them is the desire to remain faithful to one of the underlying principles of our constitutional government,—the principle of separation of powers. The circumstance that judges-at-large and cadastral judges are not assigned permanently to their respective judicial districts but are to be designated by the Secretary of Justice to any province or district gave rise to the obnoxious practice of "rigodon de jueces" which was condemned by this Court in the case of *Borromeo v. Mariano*, 41 Phil., 328. With such practice,—the Court remarked—"A judge who had, by a decision, incurred the ill-will of an attorney, or official, could, by the insistence of the disgruntled party, be removed from one district, demoted and transferred to another district." He is placed at the whim and mercy of the appointing power, whose only alternative "to maintain his self-respect would be to vacate the office and leave the service." Such practice should indeed be avoided as it tends to destroy the independence of our inferior courts. This is an evil which should be remedied, and the present provision aims to provide for this remedy. Another reason which argues in favor of this provision is the power of Congress to reorganize the inferior courts with a view to promoting an efficient administration of justice. The elimination of these positions and their conversion into district judges can be properly accomplished under this constitutional power provided that the incumbent judges be not deprived of their tenure of office guaranteed to them by the Constitution.

I am therefore of the opinion that Section 3 of Republic Act No. 1186 can be maintained if this Court should declare that said provision should operate prospectively in the sense that Article 3 of said Act shall take effect when the present positions of judges-at-large and cadastral judges are left vacant either by the appointment of their incumbent to the positions of district judges created in said Act or upon the voluntary resignation or retirement from office. Only in this way can we properly harmonize the power of Congress to reorganize our inferior courts and the tenure of office guaranteed to our judges by our Constitution which is the foundation stone on which the independence of the judiciary is firmly predicated.

My stand, therefore, is: If Section 3 of Republic Act No. 1186 should be interpreted as having the effect of sweeping the petitioners out of office, the same is void because it impairs their tenure of office as guaranteed by our Constitution.

Petition denied.

RECENT DECISIONS*

Civil Law Ownership of commingled¹ goods.

MONTELIBANO, ET AL. V. THE BACOLOD MURCIA MILLING CO., INC.
G.R. No. L-5416, July 26, 1954

If goods of the same kind belonging to different owners are stored in one single mass, without separation or identification and a part of such goods are withdrawn without express statement as to whose goods are withdrawn, the remaining mass must pertain to the original owners in the proportion of the original amounts owned by each of them.² This doctrine in civil law was invoked by our Supreme Court in the case under review.

The plaintiffs are sugar planters. They had contracts with the defendant corporation for the delivery of their sugar cane to the mill of the defendant for milling and processing into sugar. At the time of the occupation of Negros Occidental by the Japanese forces in 1942, there were on deposit at the central's warehouse 664,091.22 piculs of sugar, of which 128,452.24 belonged to the plaintiffs, 284,425.81 to the defendants, and the balance to other planters. In 1943, the Mitsui Bussan Kaisha, Ltd., as the authorized purchaser of the military administration, notified the president of the planters' association that it was buying all the sugar of the planters. Several warehouse orders for release of sugar were issued. Withdrawals were made during the years 1943 and 1944, but without indication as to whose sugar the withdrawals were being made. At the time of the liberation, only 150,000 piculs of sugar were left in the warehouse. Plaintiffs claimed that the sugar belonged to them to the exclusion of the defendant, inasmuch as the latter had sold its share during the Japanese occupation and repudiated the proration previously agreed upon among the planters and defendant.

The Supreme Court affirmed the trial court's decision upholding the proration. Speaking through Mr. Justice Alejo Labrador, the court said:

"... as the sugar of the plaintiff and of the other planters and of the Central were stored together in one single mass without separation or identification and as it appears that the Mitsui Bussan Kaisha made withdrawals of sugar from the Central's warehouse without express

* Reviews of recent decisions on Civil Law were made by Miss Luz Villamor, with the assistance of Miss Leonida G. Tansinsin; and on Criminal Law and Criminal Procedure by Fernando C. Campos, with the assistance Rodolfo Publico and Gregorio Castillo; Constitutional Law by Sotero Balmaceda, with the assistance of Sabino Padilla, Jr. and Miss Lilia C. Lopez.

¹ Commixtion or confusion is the "mixture of things solid or liquid pertaining to different owners." (3 S.P. 101), cited in 1 PADILLA, CIVIL CODE ANNOTATED, (1953) 627.

² Santos v. Bernabe 54 Phil. 19 (1929).

statement as to whose sugar as being withdrawn . . . it is absolutely impossible, physically or legally, to determine whose sugar it was that remained after the withdrawals. There is no legal basis for plaintiff's proposition that as the taking of their sugar was without their consent, all that remained is theirs. The only legal solution is, as the mass of sugar in the warehouse was owned in common, and as it is not possible to determine whose sugar was withdrawn and whose as not, the mass remaining must pertain to the original owners in the proportion of the amounts owned by each of them."

The Court referred to Article 381 of the Spanish Civil Code, reproduced in Article 472 of the New Civil Code of the Philippines,² which provides:

"If by the will of their owners two things of the same or different kinds are mixed, or if the mixture occurs by chance, and in the latter case things are not separable without injury, each owner shall acquire a right proportional to the part belonging to him, bearing in mind the value of the things mixed or confused."

Civil Law.—Characterization of donations.

HEIRS OF BONSA TO V. COURT OF APPEALS AND JOSEFA UTEA, ET AL. G.R. No. L-6600, July 30, 1954

The character of the donation, not its name, is decisive.¹ Our Supreme Court in this case enumerated three characteristics of dispositions *post mortem* or donations *mortis causa*² which distinguish them from donations *inter vivos*.³ They are:

(1) Donations *mortis causa* convey no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;⁴

(2) That before his death, the transfer should be revocable by the transferor at will, *ad nutum*; but revocability may be provided for in-

¹ A similar provision is found in Sec. 23 of the Warehouse Receipts Law (Act 2137). "Fungible goods may be commingled if warehouseman authorized.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole."

² *Guzman v. Adea*, 67 Phil. 633 (1939); *Laureta v. Mata et. al.*, 44 Phil. 668 (1923); *Bautista et. al. v. Sabidiano et. al.*, G.R. No. L-4236.

³ Art. 728, New Civil Code.

⁴ Art. 729, New Civil Code, provides: "When the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation *inter vivos*. The fruits of the property from the time of the acceptance of the donation shall pertain to the donee, unless the donor provides otherwise."

⁵ *Vidal v. Posadas*, 58 Phil. 108 (1933); *Guzman v. Adea*, *supra*, note 1.

directly by means of a reserved power in the donor to dispose of the properties conveyed;⁵

(3) That the transfer should be void if the transferor should survive the transferee.

The Court found none of these characteristics discernible in the deed of donation under question. These documents were executed by Domingo Bonsato in favor of his brother, Juan, and his nephew, Felipe. Some of its provisions are:

"Que mi sobrino FELIPE BONSA TO, casado, tambien mayor de edad, vecino de Agno, Pangasinan, I. P., en consideracion de su largo servicio a Domingo Bonsato, por la presente hago y otorgo una donacion perfecta e irrevocable consumada a favor del citado Felipe Bonsato de dos parcelas de terreno palayero como su describe mas abajo.

"Que en este de 1939 el donante Domingo Bonsato ha entregado a Felipe Bonsato dichos terrenos donados y arriba citados pero de los productos mientras vive el donante tomara la parte que corresponde como dueño y la parte como inquilino tomara Felipe Bonsato.

"Que despues de la muerte del donante entrara en vigor dicha donacion y el donatario Felipe Bonsato tendra todos los derechos de dichos terrenos en concepto de dueño absoluto de la propiedad libre de toda responsabilidad y gravamen y pueda ejercitar su derecho que ora convenientes."

Plaintiffs-respondents Josefa Utea and other heirs of Domingo Bonsato charged that the donations of the lots were *mortis causa*, and hence, void for lack of the requisite formalities. Defendants-petitioners Juan and Felipe Bonsato averred that the donations made in their favor were voluntarily executed in consideration of past services rendered by them to the decedent.

The Court of Appeals reversed the trial court's holding that the donations were *inter vivos*. It predicated its findings on the phrase "that after the death of the donor, the aforesaid donation shall become effective."

The sole issue submitted to the Supreme Court, therefore, was the juridical nature of the donations in question. In reversing the appellate court and declaring the donations *inter vivos*, the Court relied on the fact that the deeds were expressly declared to be "irrevocable," a quality which the Court found was "absolutely incompatible" with the idea of a conveyance *mortis causa*.⁶

In respect to the phrase relied upon by the Court of Appeals, Mr. Justice J. B. L. Reyes said:

"However, said expression must be construed together with the rest of the paragraph, and thus taken, its meaning clearly appears to be that after the donor's death, the donation will take effect so as to

⁵ *Bautista v. Sabiniano*, *supra*, note 1.

⁶ *Cf. Concepcion v. Concepcion*, G.R. No. L-4225, August 25, 1952, where the court held: "x x x and the condition that is to take effect only after the death of donor should be interpreted as meaning that the possession and enjoyment of the fruits of the property donated should take place only after the donor's death."

make the donees the absolute owners of the donated property, free from all liens and encumbrances; for it must be remembered that the donor reserved for himself a share of the fruits of land donated. Such reservation constituted a charge or encumbrance that would disappear upon the donor's death, when full title would become vested in the donees.⁶ x x x Any other interpretation of this paragraph would cause it to conflict with the irrevocability of the donation and its consummated character . . . a conflict that should be avoided."

The Court differentiated this case from *Cariño v. Abaya*,⁷ where the properties were not to be given until thirty days after the death of the last of the donors and the word "inherit" was used; from the case of *Bautista v. Sabiniano*,⁸ where the donor expressly reserved the right to dispose of the properties conveyed at any time before his death; and from the case of *David v. Sison*,⁹ where the donor required that his consent be secured before the donee could dispose of the properties. In all these cases, the circumstances clearly indicated the transferor's intention to defer the passing of title until after his death. In the case under review, the existence of consideration, the express irrevocability of the transfer, and the absence of any reservation by the donor of title to, or control over the properties donated, lead to the opposite conclusion—that the transferor had the intention of passing title before death.

This case of *Bonsato and Bonsato v. Court of Appeals*¹⁰ is notable in that, for the first time, our Supreme Court has openly declared that donation *moris causa* as an independent legal concept is no longer existent. Said the Court:

"Despite the widespread use of the term 'donations *moris causa*,' it is well established at present that the Civil Code of 1889, in its Art. 620, broke away from the Roman law traditions, and followed the French doctrine that no one may both donate and retain ('*donner et retenir ne vaut*') by merging the erstwhile donations *moris causa* with the testamentary dispositions, thus suppressing said donations as an independent legal concept. The term 'donations *moris causa*' as now commonly employed is merely a convenient name to designate those dispositions of property that are void when in the form of donations."

Civil Law.—*The validity of a will is determined by the law in force at the time of its execution.*

ENRIQUEZ, ET AL. V. ABADIA
G.R. No. L-7188, August 9, 1954

In our jurisdiction, the recognized rule is that the validity of the execution of a will must be tested by the statutes in force at the time of its execution and that statutes subsequently enacted have no retro-

⁷ 70 Phil. 182 (1940).

⁸ *Supra*, Note 1.

⁹ 42 O.G. 3155 (1946).

¹⁰ G.R. No. L-6600, July 30, 1954.

active effect. This rule was laid down in the oft-cited case of *In re Will of Riosa*.¹ It was given legislative force in the new Civil Code,² and reaffirmed in *Enriquez v. Abadia*.³

In the *Abadia* case the will in question was executed in 1923. Father Sancho Abadia, the testator, died in 1943. The will, which was holographic, was presented for probate in 1946. At the time the will was executed in 1923 and at the time Father Abadia died in 1943, holographic wills were not recognized, but under the new Civil Code,⁴ which took effect on August 30, 1950,⁵ a person may execute a holographic will.

Because the new Civil Code was already in force at the time the case was heard in 1952, the court admitted the will to probate.

However, the Supreme Court declared that the validity of a will is to be judged not by the law in force at the time of the testator's death, nor at the time the supposed will is presented in court for probate, nor when the petition for probate is decided by the court, but at the time the instrument is executed.

The view has been advanced that the intention of the testator should be the ruling and controlling factor; that all adequate remedies and interpretations should be resorted to in order to carry out said intention; and that when statutes passed after the execution of the will and after the death of the testator lessen the formalities required by law for the execution of wills, said subsequent statutes should be applied so as to validate wills defectively executed according to the law in force at the time of execution.

In rejecting the application of this view, the court, through Mr. Justice Marceliano Montemayor, said:

"However, we should not forget that from the day of the death of the testator, if he leaves a will, the title of the legatees and devisees under it becomes a vested right, protected under the due process clause of the constitution against a subsequent change in the statute adding new legal requirements of execution of wills which would invalidate such will. By parity of reasoning when one executes a will which is invalid for failure to observe and follow the legal requirements at the time of its execution, then upon his death, he should be regarded and declared as having died intestate, and his heirs will then inherit by intestate succession, and no subsequent law with more liberal requirements or which dispenses with such requirements as to execution should be allowed to validate a defective will and thereby divest the heirs of their vested rights in the estate by intestate succession. The general rule is that the Legislature cannot validate void wills."

¹ 39 Phil. 23 (1918).

² Art. 795.

³ G.R. No. L-7188, August 9, 1954.

⁴ Art. 810.

⁵ *Lara v. del Rosario*, G.R. No. L-6339, April 20, 1954.

Civil Law.—Lease of lands by aliens.**SMITH BELL & CO., LTD. v. REGISTER OF DEEDS
G.R. No. L-7084, October 27, 1954**

Petitioner Smith Bell & Co., Ltd., an alien corporation, leased a parcel of land in Davao for a period of 25 years, renewable for another 25 years. Because the Register of Deeds of Davao expressed doubts as to the propriety of the registration, petitioner brought the matter to the Chief of the General Land Registration Office who rendered the opinion that the contract of lease was unregistrable because of the long duration of the lease.

The opinion was based on a circular of the Secretary of Justice to the effect that the duration of a lease of land to an alien should not be as to vest in the lessee the possession and enjoyment of land with the permanency which proprietorship ordinarily gives.¹ Petitioner filed this petition to compel respondent to register the contract of lease in question.

Under the Constitution of the Philippines, aliens are not prohibited from leasing lands. The issue is: are they prohibited from so leasing under the provision of the New Civil Code?

The pertinent provisions of the Civil Code are:

Art. 1646. The persons disqualified to buy referred to in article 1490 and 1491, are also disqualified to become lessees of the things mentioned therein."

Article 1490 refers to the husband and wife selling property to each other.

Article 1491 provides:

"The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

- (1) The guardian, the property of the person or persons who may be under his guardianship;
- (2) Agents....;
- (3) Executors and administrators....;
- (4) Public officers and employees....;
- (5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice....;
- (6) Any others disqualified by law.

The court said that aliens could not be included in the phrase "any others specially disqualified by law" of paragraph 6, Art. 1491, because the enumeration covers disqualification of persons who stand in fideicommissary relation with the lands subject of the purchase.

In Mr. Justice Guillermo Pablo's own words:

"La prohibición de los cinco casos del artículo 1491 se funda en principios de moralidad: El tutor, albacea o administrador no debe

¹ Circular No. 139, May 6, 1952.

aprovecharse de la confianza depositada en el, comprando los bienes de la tutela, del albaceazgo o de la administracion. Los agentes no deben tomar ventaja de su relacion fiduciaria con el mandante, adquiriendo en compra la propiedad del mandante, a menos que este lo haya consentido. Los funcionarios publicos no deben aprovecharse de las ventajas que les proporciona su cargo para comprar los bienes confiados a ellos para beneficio del publico. Los magistrados, jueces, fiscales, escribanos y otros empleados relacionados con la administracion de justicia tampoco deben hacer uso indebido de su cargo para adquirir los terrenos en litigio en su respectiva jurisdiccion.

"Se refiere el parrafo 6 del articulo 1491 a todas las personas y a todas los bienes en general, o solamente a ciertas personas que tienen relacion fideicomisaria con los bienes cuya adquisicion por compra se prohíbe? Creemos que no se refiere a todas las personas en general nacionales o extranjeros, sino solamente a aquellas personas a quienes, por las relaciones especiales que tienen con los bienes, no debe permitirseles comprarlos. Y por eso dice: Any others specially disqualified by law.

It is interesting to note that eminent authors in civil law always cited the case of aliens as an example of those specially disqualified by law under paragraph 6 of Article 1496 to purchase land.² With this pronouncement by our Supreme Court, it is evident that the use of the example no longer stands. Plaintiff-appellant, however, has filed a motion for reconsideration and this is still pending in the Supreme Court.

Civil Law.—Prevention of trespass by third persons is not covered by the lessor's obligation or undertaking to maintain the lessee in the peaceful enjoyment of the property leased to him.

THE CITY OF NAGA V. THE COURT OF APPEALS & MARTIN SALES
G.R. No. L-5944, November 26, 1954

One of the lessor's duties to his lessee is to maintain him in the peaceful enjoyment of the lease.¹

"The lessor must see that the enjoyment is not interrupted or disturbed either by others' acts or by his own. By his own acts, because, being the person principally obligated by the contract, he would openly violate it if, in going back on his agreement, he should attempt to

² IV Capistrano, *Civil Code of the Philippines With Comments and Annotations* (1951) 44. III Padilla, *Civil Code Annotated* (1953) 792.

¹ The lessor's duties are enumerated in Art. 1654 of the Civil Code which provides:

"The lessor is obliged:

1. To deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended;
2. To make on the same during the lease all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary;
3. To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract."

render ineffective in practice the right in the thing he had granted to the lessee; and by others' acts, because he must guarantee the right he created, for he is obliged to give warranty in the manner we have set forth in our commentary on Article 1553 and, in this sense, it is incumbent upon him to protect the lessee in the latter's peaceful enjoyment."²

But the lessor is liable only for a juridical disturbance (*perturbacion de derecho*) and not mere trespass (*perturbacion de mero hecho*).³ In the case of a lease of a market stall, the plying of sidewalk vendors around the stall constitutes an act of mere trespass and the prevention of such trespass is not included in the lessor's obligation or undertaking to maintain the lessee in the peaceful enjoyment of the stall leased to him.⁴ This was the ruling laid down by the Supreme Court in *The City of Naga v. The Court of Appeals & Martin Sales*.

Respondent Martin Sales leased a stall in the public market of Naga City after a successful bid. He was granted the right to occupy the stall beginning January 25, 1949, for and in consideration of a monthly rental of ₱80.00 which he paid up to the month of May 1949. Thereafter, he refused to pay the rentals because of the city's failure to clear the sidewalk surrounding his stall of vendors. He complained to the city officials about the matter and on March 28, 1950, the sidewalk and alley were cleared of vendors.

The City of Naga sought to eject respondent Sales for non-payment of rentals. Sales filed a counterclaim for ₱8,185.50 as damages caused him by the failure of the City to clear the sidewalk near his stall. The Court of first Instance on appeal from the municipal court dismissed the complaint for ejectment and denied the counterclaim. The Court of Appeals reversed the decision of the trial court in so far as it dismissed the counterclaim for damages and awarded to Sales the sum of ₱8,185.50 as damages.

The Supreme Court, after declaring the juridical relation between the owner of the market stall—the City of Naga—and the occupant thereof—Martin Sales—as that of lessor and lessee, found that the lessor City of Naga had fulfilled all the obligations imposed upon it by law and, hence, was not liable for damages.

² Manresa, quoted in *Goldstein v. Roces*, 34 Phil. 562, 564 (1916).

³ Art. 1664 of the Civil Code provides in part "The lessor is not obliged to answer for a mere act of trespass which a third person may cause on the use of the thing leased; by the lessee shall have a direct action against the intruder.";

"Briefly, if the act of trespass is not accompanied or preceded by anything which reveals a really *juridic* intention on the part of the trespasser, in such wise that the lessee can only distinguish the material fact, stripped of all legal forms or reason, we understand it to be trespass in fact only (*de mero hecho*)." Manresa, quoted in *Goldstein v. Roces*, 34 Phil. 562 (1916), 566-567.

⁴ *Cf. Lo Ching and So Yung Chong Co. v. Arzobispo Catolico Romano de Manila*, 46 O.G. (Supp. 1) 399, (1948); *Afesa v. Ayala y Cia.*, G.R. No. L-2376, June 27, 1951.

According to the court, the fact that the City of Naga allowed vendors to ply their trade on the sidewalk did not constitute a breach of the lessor's obligation to maintain the lessee in the peaceful enjoyment of the stall.

The Court further stated, through Mr. Justice Sabino Padilla:

"The lessee had not been disturbed in his physical and natural possession of the stall. The competition offered by the vendors is not juridical disturbance (*peturbacion de derecho*) of the peaceful enjoyment of the stall leased but at most an act of mere trespass (*peturbacion de mero hecho*) by third persons and the prevention of such trespass is not included in the lessor's obligation or undertaking to maintain the lessee in the peaceful enjoyment of the stall leased to him."

A contract of lease, the court averred, is no warranty by the lessor to the lessee that the latter will realize profits in his business venture. Even if the lessee should suffer losses he would still be bound to fulfill the terms of the contract.

Civil Law—*The provision that "no vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others" is directed at the offender and not the offended party; applicability of divorce law.*

RAYMUNDO V. PEÑAS
G.R. No. L-6705, Dec. 23, 1954

The defendant in the above case, Doroteo Peñas, was convicted of concubinage by the trial court on May 25, 1950. The conviction was affirmed by the Court of Appeals on October 31, 1951. But even before the appellate court could issue the judgment, the wife, Patrocinio Peñas, brought divorce proceedings against her husband on July 14, 1950.

The question which confronted the court was whether to apply the old Civil Code, which permitted absolute divorce, or the new Civil Code, which permitted only relative divorce or legal separation. This issue cropped up because the acts of concubinage, as well as the judgment of conviction took place before the effectivity of the new Civil Code on August 30, 1950,¹ while the appellate court's judgment confirming the conviction was promulgated only after the new code took effect.

Applying Art. 2254 of the New Civil Code which provides that:

"No vested right or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others,"

the trial court dismissed the complaint for divorce. In effect, the trial court applied the aforementioned provision against the complainant, who was the offended party in the concubinage case.

¹ *Lara v. del Rosario*, G.R. No. L-6339, April 30, 1954.

In reversing the trial court's decision and ordering judgment for divorce, the Supreme Court noted that "laws shall have no retroactive effect unless the contrary is provided"² and that

"Actions and rights which came into being but were not exercised before the effectivity of this Code, shall remain in full force in conformity with the old legislation; but their exercise, duration and the procedure to enforce them shall be regulated by this Code and by the Rules of Court. If the exercise of the right or of the action was commended under the old laws, but is pending on the date this Code takes effect, and the procedure was different from that established in this new body of laws, the parties concerned may choose which method or course to pursue."³

The plain implications of these provisions taken together, the court concluded,

". . . is that the Code did not intend its provisions on legal separation to apply retroactively; and that the change from absolute divorce to legal separation was not designed to affect cases of which the Court had already taken cognizance at the time of the reform was introduced."

It is of no moment that the judgment of conviction of defendant became final only after the new Civil Code, which denies absolute divorce, came into effect.

The court declared that the prohibition contained in Art. 2254 is directed at the offender (the husband in this case) and not at the offended party (the wife in this case), who is in no way responsible for the violation of the legal duty.

The court held that, if Art. 2254 were interpreted otherwise, the result would be to deprive the victim of such violation of any redress because of the very acts that injured him.⁴

Criminal Law.—Reasonableness of means employed to commit a crime; incomplete self-defense.

PEOPLE VS. MAULA
G.R. No. L-7191, Oct. 18, 1954

Under the Revised Penal Code, whether or not the offender had intended to commit so grave a wrong as that committed may be gauged from the existence or presence of a notable and evident disproportion between the means employed to execute the criminal act and its conse-

² Art. 4, New Civil Code.

³ Art. 2258, New Civil Code.

⁴ The Court's decision finds support in the Report of the Code Commission, p. 167: "It is evident that no one can validly claim any vested or acquired right if the same be founded upon his having violated the law or invaded the rights of others. This principle is universally accepted."

quences.¹ To state it in another way, it is required that the injury caused be not commensurate with, or proportional to, the intensity of the means employed or to the efficacy of the instrument used to commit the same.² The intention of the offender in most cases, must be inferred from the nature and extent of the tangible evils committed, because the evil is almost always the sensible manifestation of the will of the offender, except when the evidence or other facts and the circumstances may serve as a reasonable ground to hold that the material act has gone beyond the limits of intention.³

In other words, the mitigating circumstance of lack of intent to commit so grave a wrong cannot be availed of if the accused really intended the wrong resulting from his acts and the intention as an internal act, "a creature of the mind," may be determined by the means or weapon employed, to what part of the body the weapon was applied and the resulting injury.⁴

In the case under review, the Supreme Court refused to appreciate the mitigating circumstance of lack of intent to commit so grave a wrong as claimed by the accused. The facts of the case showed that the accused and deceased were joking one morning and the deceased provoked by one of Maula's remarks, started hitting the accused. In retaliation, the accused drew out his knife and stabbed the deceased twice in two vital parts of the body. The court held there was no lack of intent to commit so grave a wrong because the two mortal wounds were inflicted in two vital parts of the body and because the accused "made use of a weapon which was as deadly as it was unnecessary."

The special mitigating circumstance of incomplete self-defense was credited in defendant's favor, however, because the Supreme Court found that, of the three elements of self-defense, only that of reasonable necessity of the means employed was lacking. The means employed by the defendant in order to overcome the aggression was reasonably adequate to the nature of the assault; it exceeded the boundaries of reasonable necessity and prudence fixed by the circumstances. Said the court:

"These facts show that the initial provocation which resulted in the aggression on the part of the accused did not come from the latter but from the deceased himself, and hence it can be said that, of the circumstances that may justify the killing of a person by one who acts in self-

¹ Art. 13 (3); *United States v. Reyes*, 36 Phil. 904.

² Decree of the Supreme Court of Spain, August 10, 1900; *People v. Sia Bonkia* 60 Phil. 1 (1934).

³ Decree of Supreme Court of Spain, June 10, 1892.

⁴ See *People v. Orongan and Jerez*, 58 Phil. 426 (1933); *People v. Reyes*, 61 Phil. 341 (1935); *People v. Albuquerque*, 59 Phil. 150 (1933); *People v. Dungka*, 64 Phil. 422 (1937); *People v. Hubero*, 61 Phil. 64 (1934); *People v. Flores*, 50 Phil. 548 (1927); *United States v. Fitzgerald*, 29 Phil. 419 (1903); *United States v. de Silva*, 14 Phil. 413 (1909); *People v. Datu Baquinda*, (CA) 44 O.G. 2287 (1947); *People v. Banlos*, G.R. No. L-3413, December 29, 1950.

defense, two have concurred. Unlawful aggression and lack of sufficient provocation . . . the aggression was started by the deceased because of the provocation which he himself initiated by making the caustic remark that the accused was no match against him although the means employed by the accused to repel the aggression was unreasonable." ⁵

Naturalization—*Residential, occupational and educational qualifications further construed.*

UYTENGUSU V. REPUBLIC

G. R. No. L-6379, Sept. 29, 1954

TIONG V. REPUBLIC

G. R. No. L-6274, Feb. 26, 1954

NG V. REPUBLIC

G. R. No. L-5253, Feb. 22, 1954*

Naturalization of aliens is said to be an act of grace, and not a right,¹ and is purely statutory.² As such, before an alien or a subject of a foreign country may be naturalized and thus vested with the rights and privileges of a Filipino citizen, he must comply with the provisions of our Naturalization Law.³

In the above-mentioned case of *Uytengusu v. Republic*, our Supreme Court had occasion to answer the question whether or not the applicant's petition for naturalization be granted, notwithstanding the fact

⁵ See *United States v. Conchita*, 1 Phil. 30 (1901); *United States v. Castro*, 2 Phil. 67 (1903); *United States v. Sy Vinco*, 51 Phil. 47 (1905); *United States v. de Ocampo*, 6 Phil. 449 (1906); *United States v. Dimitillio*, 7 Phil. 475 (1907); *United States v. Agaludud*, 8 Phil. 750 (1907); *United States v. Pacsa*, 28 Phil. 222 (1914); *United States v. Rivera*, 41 Phil. 472 (1921); *People v. Mercado*, 43 Phil. 995 (1922); *People v. Almendralejo*, 48 Phil. 268 (1925); *People v. Bergaño*, 52 Phil. 313 (1928); *People v. de la Peña*, 54 Phil. 818 (1930); *People v. Alviar*, 56 Phil. 98 (1931); *People v. Lucero*, 49 Phil. 160 (1926); *People v. Sobretudo*, C.A. 40 O.G. 560 (1929). But see *People v. Castañeda*, 60 Phil. 604, 609 (1934).

* Another case decided by the Supreme Court regarding naturalization may be worth noting. In *Pitallano v. Republic*, G.R. No. L-5111, June 28, 1954, the petitioner's application for naturalization was dismissed simply because Pitallano, already of Filipino citizen according to the findings of the lower court, did not have to apply for naturalization. This decision reaffirmed the ruling laid down in *Palanca v. Republic*, 45 O.G. Supp. No. 9, 204 (1949), to the effect that the mistake or misapprehension of the petitioner as to his citizenship is not a sufficient cause or reason under the law for the forfeiture of his Philippine citizenship. Neither may such mistake or misapprehension constitute estoppel. A Filipino citizen need not apply for citizenship by naturalization or have a certificate of citizenship of the Philippines of which he is already a citizen. See also *Serra v. Republic*, G.R. No. L-4223, May 12, 1952; *Santos Co. v. Government*, 52 Phil. 543 (1928); and *United States v. Tiansse*, 29 Phil. 332 (1915).

¹ *State ex rel. Gorelick v. Superior Court*, 75 Wash. 239, 134 P. 916 (1913). Naturalization is a privilege to be given, qualified, or withheld as Congress may determine, and which the alien may claim . . . only on compliance with the terms which Congress imposes. *United States v. Macintosh*, 283 U.S. 605, 75 L. ed. 1302, 51 Sup. Ct. 570 (1931).

² *Morrison v. California*, 291 U.S. 82, 78 L. ed. 664, 54 Sup. Ct. 281 (1934); *Zaratarian v. Billings*, 204 U.S. 170, 51 L. ed. 428, 27 Sup. Ct. 182 (1907).

³ C.A. No. 473, June 17, 1939, as amended.

that he left the Philippines immediately after filing his petition and did not return to the Philippines until several months after the first date for the hearing thereof.

The plaintiff-petitioner in this case filed his application for naturalization on July 15, 1950 and soon thereafter he went to the United States and took a postgraduate course. He returned to the Philippines only on October 13, 1951, such that the hearing of his application originally scheduled to take place on July 12, 1951 had to be postponed. The applicant, in an attempt to comply with Section 7 of the Naturalization Law, stated in his application that he "will reside continuously in the Philippines from the date of the filing of (his) petition up to the time of (his) admission to Philippine citizenship."⁴

Despite the opposition made by the Solicitor General, the Court of First Instance of Cebu granted Uytengsu's petition, on the ground, as claimed by applicant, that the word "residence" in the Naturalization Law, is synonymous with "domicile."⁵ The Solicitor General, therefore, appealed to the Supreme Court.

The Supreme Court, through Justice Concepcion, held that the requisite of residence was not complied with by the applicant, and, therefore, he could not be naturalized as a Filipino citizen.⁶ The petitioner's contention to the effect that since he had his domicile or legal residence here, he must have nevertheless been domiciled in the Philippines on both the time of his filing his petition and also of the time of the hearing was, according to the Court, absurd. It further explained thus—

"...when section 7 of Commonwealth Act No. 473 imposes upon the applicant the duty to state in his sworn application 'that he will reside continuously in the Philippines' in the intervening period, it can not refer merely to the need of an uninterrupted domicile or legal residence, for said legal residence or domicile is obligatory under the law, even in the absence of the requirement contained in said clause, and, it is well settled that, whenever possible, a legal provision must not be so construed as to be a useless surplusage...in the sense of adding nothing to the law or having no effect whatsoever thereon. These consequences may be avoided only by construing the clause in question as demanding actual residence in the Philippines from the filing of the petition...to its determination by the court."

⁴Sec. 7 of C.A. No. 473 provides: "Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition...setting forth...; and that he will reside continuously in the Philippines from the date of the filing of the petition up to the time of his admission to Philippine citizenship..."

⁵It appeared that his domicile (or legal residence) in the Philippines was beyond question (such that he did not even have to file his declaration of intention), and petitioner thus claimed that domicile, once acquired, is not lost by physical absence, and hence his stay abroad did not make him a non-resident of the Philippines.

⁶The denial by the Supreme Court of petitioner's application was, however, without prejudice to the filing of another application, if he so desired, in conformity with law.

In other words, it was erroneous for the applicant to consider "domicile" synonymous with "residence." Although the applicant had the Philippines as his domicile or legal residence, yet he was not a resident of the Philippines, for purposes of naturalization, during the period between his filing his application and the hearing thereof. Citing *Kennan on Residence and Domicile*, Justice Concepcion pointed out that—

"...The essential distinction...is this: the first (residence) involves the intent to leave when the purpose for which he has taken up his abode ceases; the other (domicile) has no such intent, the abiding is *anim manendi*. One may seek a place for purposes of pleasure, of business, or of health. If his intent be to remain it becomes his domicile; if his intent is to leave as soon as his purpose is accomplished, it is his residence. Perhaps the most satisfactory definition is that one is a resident of a place from which his departure is indefinite as to time, definite as to purpose; and for this purpose he has made the place his temporary home."⁷

The reason for the requirement of residence is to give the Government sufficient time to check the truth of the statements made in the applicant's declaration of intention to acquire Filipino citizenship, if any, and in the application for naturalization, especially the allegations therein relating to the possession by the applicant of the qualifications and none of the disqualifications provided by law. In this case, the need for residence was all the more imperative since the applicant was born in the Philippines and that he finished his primary and secondary education here, and was, therefore, exempted from the requirement under the Naturalization Law to file a declaration of intention. The Government, therefore, had no previous notice of his intention to apply for naturalization until the filing of his petition, and since he did not reside here continuously after he had filed his petition up to the hearing, the Government could not make the requisite investigation of the matter.

⁷Pages 26, 31-35. "There is a difference between domicile and residence. 'Residence' is used to indicate the place of abode, whether permanent or temporary; 'domicile' denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with intention to remain for an unlimited time. A man can have but one domicile for one and the same purpose at any time, but he may have numerous places of residence. His place of residence generally is his place of domicile, but is not by any means necessarily so, since no length of residence without intention of remaining will constitute domicile."

Such distinction was applied in *Dy Chinco v. Republic*, G. R. L-4548, Nov. 26, 1952, where the applicant who, though born here, went to China to study and occasionally returned here, coming back permanently in 1937, was denied naturalization when he applied therefor in 1949. The question was: Was Chinco exempted from filing a declaration of intention as required by Sec. 6 of Com. Act No. 473 (as amended by Com. Act No. 535) because he had "resided in the Philippines continuously for a period of thirty years or more, before filing their (his) application"? The Supreme Court held in the negative, upon the ground that "actual and substantial residence within the Philippines," not "legal residence," or "domicile," alone, is essential to the enjoyment of the benefits of said exemption.

In the case of *Tiong v. Republic*,⁸ the requirement to have a "known lucrative trade, profession or lawful occupation"⁹ was applied. The petitioner here was employed in the business of his father with an annual salary of ₱3,000, and, although he did not receive regular monthly pay, he could nevertheless get, when needed, advances on account of his annual compensation. It also appeared that the applicant and his family were living in the parental home, with free board and lodging. Under these circumstances, the Supreme Court held that Tiong possessed the qualification of having a "known lucrative trade, profession or lawful occupation."¹⁰

Section 6 of the Naturalization Law, as amended, provides among other things:

"Persons exempt from requirement to make a declaration of intention.—Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application, may be naturalized with out having to make a declaration of intention upon complying with the other requirements of this Act. . . ."

The applicant in *Ng v. Republic*¹¹ was denied naturalization by the lower court on the ground that he had not made a declaration of intention to become a Filipino citizen one year before he filed his petition for naturalization. Ng did not reside for thirty years in the Philippines, and he had finished only the first and second years of high school. On appeal to the Supreme Court, Ng claimed that he was entitled to the exemption under Section 6 because the course he took in the National Radio School and Institute of Technology in Manila is equivalent to the third and fourth years of the high school.

The Supreme Court turned down this contention, stating that the subjects given in the high school course are entirely different from those given in the vocational school; that cultural training is emphasized in the first while scientific and practical training is stressed in the second; that the number of unit hours differ; that the petitioner did not therefore have sufficient knowledge of Philippine history, government and civics. The Supreme Court reiterated its view in the case of *Yap v. Republic*:

⁸ G. R. No. L-6274, Feb. 26 1954.

⁹ C.A. 473, Sec. 2

¹⁰ In *Mateo Lim v. Republic*, G. R. No. L-4588, Jan. 28, 1953, petitioner was considered to have had "some known lucrative trade, profession or lawful occupation" since he was employed in an importing firm with a salary of ₱80.00 per month with free board and lodging.

Similarly, in the case of *Rafael Lim v. Republic*, G. R. No. L-3030, Jan. 31, 1951, the applicant was granted Filipino citizenship because he was a law graduate employed as legal adviser to his brother-in-law with a monthly salary of ₱250.00. Rafael Lim was granted Philippine citizenship with this qualification, among others, although he did not own any property and although he was not given free meals and quarters by his employer.

¹¹ G. R. No. L-5253, Feb. 22, 1954.

"It would seem rather unfair to do this (deny application) because outside of his failure to file a declaration of intention, the applicant is clearly entitled to naturalization... However, the law must be complied with."¹²

Expropriation—Power of the Government or any of its political subdivisions to expropriate lands to be subdivided into small lots and conveyed at cost to individuals.

MUN. OF CALOOCAN, RIZAL V. MANOTOK REALTY, INC.

G. R. No. L-6444, May 15, 1954

REPUBLIC V. GABRIEL ET AL.

G. R. No. L-6161, May 28, 1954

In the above-cited cases, the Supreme Court held that the expropriation proceedings instituted by the Municipality of Caloocan, Rizal, and the Republic of the Philippines against the respective respondents were improper. The 39,374 square meters of land of the Manotok Realty, Inc. was sought to be expropriated by the Municipality of Caloocan pursuant to Republic Act No. 267;¹ while the Republic of the Philippines proceeded to expropriate the 41,671.44 square meters of land situated at barrio Dampalit, Malabon, Rizal, to be distributed in small lots to occupants pursuant to Commonwealth Act No. 539.² In both cases, the Supreme Court held that lots such as the ones involved in the current cases, with an area of more or less than four hectares, are not *landed estates*, subject to expropriation under the Constitution which provides that—

"The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."³

¹²G. R. No. L-4270. It is not within the province of the courts to make bargains with applicants for naturalization. The courts have no choice but to require that there be a full compliance with the statutory provisions. *United States v. Macintosh*, 283 U.S. 605, 75 L. ed. 1032, 51 Sup. Ct. 570 (1931). "An alien who seeks political rights as a member of this nation can rightfully obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of the matters so vital to the welfare." *United States v. Ginsberg*, 243 U.S. 472, 61 L. ed. 853, 856 (1917).

¹June 15, 1948. "An Act authorizing cities and municipalities to contract loans for the purpose of purchasing or expropriating homesites and subdividing them for resale at cost."

²May 26, 1940. "An Act authorizing the President of the Philippines to acquire private lands for resale in small lots; providing for the creation of an agency to carry out the purposes of this act; and setting aside funds and authorizing the issuance of bonds for the payment of said lands."

³Art. XIII, sec. 4, Besides C.A. No. 539 and R.A. No. 267, Congress recently enacted R.A. No. 1162 (June 18, 1954) entitled, "An Act providing for the expropriation of landed estates or haciendas or lands which formed part thereof in the city of Manila, their subdivision into small lots, and the sale of such lots at cost or their lease on reasonable terms, and for other purposes."

The brevity and apparent ease with which our Supreme Court disposed of these two cases show that it has not departed from the ruling it has laid down in the case of *Guido v. Rural Progress Administration*⁴ and subsequent cases.⁵ In the *Guido* case, the Supreme Court pointed out that "the size of the land expropriated, the large number of people benefited, and the extent of social and economic reform secured by the condemnation" are the factors which clothe expropriation proceedings with public interest and public use. Our highest tribunal, however, defined its stand with more clarity in the case of *Urban Estates, Inc. v. Montesa*,⁶ stating thus:

"The *Guido*, *De Borja* and *Arellano Colleges* decisions expressly recognize the power of the Government to expropriate urban lands or rural estates for subdivision into lots. What those decisions emphasize is the distinction, set in broad outline, between taking that inures to the welfare of the community at large and taking that benefits a mere handful of people bereft of public character. In explaining the distinction we mentioned public benefit, public utility, or public advantage as the universal test of the exercise of the right of eminent domain, and warned of the tendency to expand the construction of Section 4, Article XIII, of the Constitution 'to the limit of its logic.'

"In brief, the Constitution contemplates large scale purchases or condemnation of lands with a view to agrarian reform and the alleviation of acute housing shortage....Condemnation of private lands in a makeshift or piecemeal fashion, random taking of a small lot here and a small lot there to accommodate a few tenants or squatters is a different thing. This is true be the land urban or agricultural. The first sacrifices the rights and interest of one or a few for the good of all; the second is deprivation of a citizen of his property for the convenience of another citizen or a few other citizens without perceptible benefit to the public. The first carries the connotation of public use; the last follows along the lines of a faith or ideology alien to the institution of property and the economic and social systems consecrated in the Constitution and embraced by the great majority of the Filipino people."

An authority on Philippine political law is, however, unflinching in his rejection of such a line of reasoning, for such a view, according to him, "is out of line with the social and economic policy of the Constitu-

⁴ 47 O. G. 4, 1848 (1949). The area of the lot sought to be expropriated in this case was 22,655 square meters. Expropriation was declared improper.

⁵ *Do Borja v. Commonwealth*, G. R. No. L-1496, Nov. 29, 1949; *City of Manila v. Arellano Law Colleges*, G. R. No. L-2929, Feb. 28, 1950; *Lee Tay & Leo Chay Inc. v. Choco*, G. R. No. L-3297, Dec. 29, 1950; *Urban Estates, Inc. v. Montesa*, G. R. No. L-3830, March 15, 1951; and *Republic Sarmis*, G. R. No. L-3900, July 18, 1951. The respective sizes of the lots involved in these cases may well be noted: In the *Do Borja* case, 1,565 square meters; in the *Arellano Law Colleges* case, 7,270 square meters; in the *Urban Estates* case, 49,553.10 square meters; in the *Sarmis* case, 5,593 square meters.

⁶ See Note 5, *supra*.

tion."⁷ He submits that the power of expropriation, as distinctly and clearly vested upon Congress by the Constitution, should not be rendered "worthless" by subjecting it to such stringent limitations as public purpose, public use or interest, and the size of the lot sought to be expropriated, because these matters are "decidedly legislative or political rather than judicial in character."⁸ The only question left for judicial determination, according to Dean Sinco, is whether the compensation is just or not.⁹ His disagreement with the Supreme Court is tersely and vigorously stated thus:

"The language of the Constitution in vesting this power in Congress is so simple and unequivocal that no court may be justified to resort to extrinsic aid¹⁰ to understand its meaning. And yet the Supreme Court of the Philippines disregarded it entirely and invalidated acts of expropriation of subdividing it into small lots and selling them to individuals. Its decisions on the subject so far obstinately cling to the general law eminent domain..."¹¹

Whatever may be the weight of these observations, the Supreme Court in the case of *Republic v. Samia*¹² reminds us that the Filipino people, through the Constitution, recognizing the evils of vast landholdings and concentration of wealth, "adopted certain remedial measures, some of which are: (1) limitations upon the acquisition of public land; (2) authority of Congress to determine the size of private agricultural lands which individuals may acquire; (3) congressional power to authorize expropriation of landed estates to be subdivided and sold to individuals; and (4) authority of the Government to acquire utilities and other private enterprises to be operated by it."¹³

⁷ SINCO, PHILIPPINE POLITICAL LAW, 463 (10th ed. 1954). The social and economic policy underlying the expropriation provision of the Constitution is to "install the landless individual in a home of his own, or to give a place for his business, or to establish him on a small farm of his own" and to "facilitate the ownership of homes or homesteads by as many members of the community as practicable as one of the essential steps for carrying out the constitutional policy of social justice." (pp. 459-460, *ibid.*)

⁸ *Ibid.*

⁹ *Ibid.*, at 459. Incidentally, in the case of *Rural Progress Administration v. Reyes*, G. R. No. L-4703, Oct. 8, 1953, the Supreme Court through Justice Pablo, upheld the validity of the expropriation of three lots with an area of about 10 hectares. The Court said that the size of the land is not necessarily the sole consideration in deciding expropriation cases. According to Dean Sinco (at 465-466), "this statement is worthy of note as a correct modification of the previous decisions of the Court which based the validity of expropriation on the large size of the property to be taken for subdivision and sale to private individuals."

¹⁰ The Supreme Court in the *Guido* case resorted to the speech of Delegate Cuaderno before the Constitutional Convention to explain further the import of Art. XIII, section 4 of the Constitution.

¹¹ *Op. cit. supra*, at 461.

¹² G. R. No. L-3900, July 18, 1951.

¹³ See PHIL. CONST., Art. XIII.

Criminal Law.—Qualified trespass; unlawful searches.

GABRIEL and NATIVIDAD V. PEOPLE & COURT OF APPEALS
G.R. No. L-6730, October 15, 1954

For the crime of qualified trespass to dwelling¹ to be consummated, there need be no express prohibition on the part of the owner or occupant of such dwelling, provided the latter's opposition is clearly established by the circumstances under which the entry was made.² The opposition, therefore, to the entry may be implied or presumed from the peculiar circumstances of each case, although mere absence of consent does not constitute such an opposition or prohibition as to sustain a conviction for trespass.³

In the above case, appellants, who were Meralco line inspectors, presented themselves to Mrs. Sherman Jones and asked for her husband. Mrs. Jones told them to wait at the porch. She entered the living room, closed the door behind her and went to the family bedroom where her husband was. Appellants finding something wrong with the electric meter on the porch suspected the Joneses of possessing some kind of gadget for stealing electric fluid and they rushed to the living room, pushed the bedroom door open and notwithstanding Mr. and Mrs. Jones's protests searched the room. Appellants argued that since the original entry was with the permission of the occupant and therefore lawful, nothing that happened afterwards could "convert the original entry into an unlawful one."⁴

The Supreme Court declared that such a contention was unwarranted because the entry was in fact against the will of the spouses.⁵ Said the court:

"That will was, we think, clearly manifested by the lady of the house when she told appellants to wait on the porch and closed the door behind her as she entered the drawing room. She did not, it is true, in so many words tell the appellants not to enter. But when she made them wait outside and shut the door to the interior of the house, her action even spoke louder than words. The porch is an open part of the house, and being allowed to wait there under the circumstances mentioned can in no sense be taken as entry to a dwelling with the consent of the dweller."

The appellants also claimed exemption from criminal liability under the third paragraph of Art. 280 of the Revised Penal Code because they "rendered a service to justice" when they followed Mrs. Jones to the

¹ Art. 280, Rev. Penal Code.

² *United States v. Dionisio* 12 Phil. 283 (1909); *United States v. Messina*, 2 Phil. 615 (1912); *United States v. Arceo*, 3 Phil. 381 (1904); *United States v. Cabaraban*, 36 Phil. 251 (1916).

³ *People v. Peralta*, 42 Phil. 69 (1920).

⁴ *United States v. Dionisio*, *supra*; *United States v. Fleminster*, 1 Phil. 317 (1902).

⁵ The provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of . . . rendering some service . . . to justice . . ."

bedroom upon suspicion that there was a transformer in the house. The Supreme Court also overruled this contention by stating that the above fact alone did not give the appellants the right to enter the house against the will of the owner since they were not armed with a search warrant. Thus for a person to be exempted from criminal liability even when the entry was for the purpose of rendering some service to justice, he must satisfy the legal requirements for lawful searches and seizures.

Criminal Procedure.—Jurisdiction and venue over the crime of libel; privileged communication.

PEOPLE V. W. D. CHAPMAN
G.R. No. L-6312, September 9, 1954

Libel,¹ is a continuing or transitory offense and a criminal prosecution for it may be instituted in any jurisdiction where the libelous article was published or circulated irrespective of where it was written or printed.² In conformity with this principle, the Supreme Court in the above case ruled that the court of the place where the libelous article was published or circulated has jurisdiction over the case to the exclusion of all other courts. The Court reiterated the ruling in *United States v. Canoto* that a communication made in good faith upon any subject matter in which the party making the communication has an interest or covering which he has a duty is privileged if made to a person having a corresponding interest or duty, although it contains incriminatory or derogatory matter which without the privilege would be libelous and actionable.³

Defendants, officers of the Leyte Rifle and Pistol Association, Inc., were found guilty of the crime of libel by the Samar Court of First Instance. It appeared that copies of the association's resolution which was found by the court to be libelous were sent to Pedro Mancebo (a member of the association) in Samar; to the Philippine Constabulary authorities in Tacloban and Quezon City; and to the Philippine Trading Company in Manila. The Samar court ruled that the communication

¹ Art. 353. *Definition of libel*: A libel is a public and malicious imputation of a crime or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridical person or to blacken the memory of one who is dead.

² *People v. Borja*, 43 Phil. 618, 619 (1922), overruling *United States v. Perfecto*, G.R. No. L-16338, Feb. 1, 1921 (unpublished).

³ 38 Phil. 253 (1918). See also *Zurbito v. Bayot*, 29 Phil. 219 (1911); *Gilmer v. Hilliard*, 43 Phil. 180 (1922); *United States v. Bustos*, 37: Phil. 73 (1919); *Santiago v. Calvo*, 48 Phil. 919 (1926); *United States v. Coleza*, 31 Phil. 465 (1915); *People v. Fabia*, (CA) 40 O.G. Supp. 12, 239 (1914); But "where there is malice in fact justifiable motives cannot exist" and the communication is not privileged. *United States v. Bustos*, 13 Phil. 690 (1909).

to Mancebo was privileged under the Revised Penal Code,⁴ but convicted the accused on other grounds. On appeal the Supreme Court reversed the decision of the lower court holding that it (the Samar Court of First Instance) had no jurisdiction over the case. Said the court:

"Since there is no question that the libelous resolution was adopted and copies thereof mimeographed in Leyte and not in Samar, and since the only copy sent to Pedro Mancebo in Samar was expressly found and declared by the appealed decision to be privileged, because Mancebo was a member of the Leyte Rifle and Pistol Association, Inc., and as such was interested in its affairs; and there being no finding of any other publication in the province of Samar, the resolution allegedly libelous was neither published nor circulated in said province and Court of First Instance therein had no jurisdiction to take cognizance of the crime alleged in the information."

Criminal Procedure.—Recital of facts, and not the caption in an information, characterizes the charge; when double jeopardy attaches.

PEOPLE V. CASARE
G.R. No. L-6544, Aug. 25, 1954

The erroneous and improper denomination given by the fiscal to the offense is of no importance and in no way does it affect the legal aspects of the complaint.¹ The reason underlying this principle is that the designation of the crime by name in the caption of the complaint or information is a mere conclusion of law and a denial of that conclusion raises no issue of fact. Moreover an accurate technical characterization of the crime is not necessary to protect the rights of the accused and to aid him in the defense of his case. Therefore, in such cases, "the real question is not did he commit the crime given in the law (complaint or information) some technical or specific name but did he perform the acts alleged in the body of the information (or complaint) in the manner therein set forth."² In short it is the actual re-

⁴ Art. 354 *Requirement for publicity*:—Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty . . .

¹ *United States v. Buyna*, 41 Phil. 436 (1921); Sec. 5, Rule 106, Rules of Court: Sufficiency of complaint of information.

A complaint or information is sufficient if it states the name of the defendant, the designation of the offense by the statute; the acts or commissions complained of the offended party; the approximate time of the commission of the offense, and the place where in the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint of information.

² *United States v. Lim San*, 17 Phil. 279 (1910).

cial of the facts in the complaint or information and not the designation in the caption that characterizes the charge.

In accordance with this rule, the erroneous classification of an offense properly described in the body of the complaint or information does not prevent the accused from being convicted of a crime different from that designated; neither can it affect the sentence that may be meted out in the case.³

This principle which has been followed through a long list of cases starting from 1903,⁴ was reiterated in the above case of *People v. Casare*. The facts show that one Valera Pagas filed a complaint charging the accused with "abuse against chastity." The complaint was amended by the Chief of Police who changed the designation of the offense to "qualified trespass to dwelling and physical injuries." This latter charge was again modified and a preliminary investigation was made on the second amended complaint. When the case was forwarded to the Court of First Instance, the provincial fiscal filed an information for acts of lasciviousness through qualified trespass to dwelling. When the case was called for trial, the defense had the case remanded to the justice of the peace court on a motion to quash on the ground that the preliminary investigation was made under the second amended complaint filed by the Chief of Police and not under the complaint of the offended party. This was done after the offended party had filed an amended complaint charging the accused with the offense of acts of lasciviousness. After the case was again forwarded to the Court of First Instance, the provincial fiscal filed an information of "acts of lasciviousness" against the accused. The Court of First Instance found the accused guilty of qualified trespass and sentenced him accordingly. The defendant appealed, contending that he could not be convicted of qualified trespass when the charge was for acts of lasciviousness. The Supreme Court overruled that contention, upholding the principle laid down in the case of *U.S. v. Lim San* and subsequent similar cases.⁵

In his appeal, the defendant also claimed double jeopardy. In denying this plea, the Supreme Court again upheld the hallowed principle that for double jeopardy to attach, there must be a dismissal or termination of the case without the express consent of the accused, which

³ See *United States v. Lido*, 2 Phil. 458 (1903); *United States v. Peralta* 8 Phil. 200 (1907); *United States v. Pana* 6 Phil. 740 (1906); *United States v. Supla*, 13 Phil. 671 (1909); *United States v. Treyes* 14 Phil. 270 (1909); *United States v. Jeffrey*, 15 Phil. 391 (1910); *Davis v. Director of Prisons*, 17: Phil. 168 (1910); *United States v. Campo*, 23 Phil. 368 (1912); *United States v. Vega*, 31 Phil. 450 (1915); *United States v. Panlillo* 28 Phil. 608 (1914); *United States v. Cabe*, 36 Phil. 728 (1917); *United States v. Oodaro*, 39 Phil. 70 (1918); *United States v. Gumban*, 39 Phil. 76 (1918); *People v. Policher*, 60 Phil. 770 (1934); *People v. Defender*, 47 O.G. 12, 214 (1950).

⁴ *United States v. Lido*, *supra*.

⁵ See Notes 2 and 3.

termination or dismissal must be definite and unconditional.⁶ The Supreme Court observed that the case was not terminated, that it was merely remanded or returned to the justice of the peace court for preliminary investigation and that a remand is not a dismissal. The Supreme Court stated further that, granting that a remand is a dismissal, double jeopardy still cannot attach because the "dismissal" was not without the express consent of the accused, he having moved for the remand according to the records of the case.

CIVIL PROCEDURE.—*Timeliness of appeals.*

PEOPLE V. MANUEL

G.R. No. L-6794 & L-6795, Aug. 11, 1954

PEOPLE V. VIOLA & ALLA

G.R. No. L-6647, September 2, 1954

In these two cases, the Supreme Court again applied the rule that appeals may only be taken from final judgments or orders.¹ And a judgment or order is final if it effectually disposes of the proceedings in the court from which appeal is taken.² In conformity with this principle it has been held that an order denying a motion to quash is not final but interlocutory and therefore may not be appealed from. This holding, first enunciated in *Fuster v. Johnson*,³ was reiterated in the case of *People v. Manuel*.

In the Manuel case, the accused appealed from an order denying a motion to quash on the ground that the assistant provincial fiscal had no authority to formulate the charges or to hold the preliminary inves-

⁶ Section 9, Rule 113 of the Rules of Court: Former conviction or acquittal or former jeopardy:—When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded, the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

See also *United States v. Laguna*, 17 Phil. 532 (1910); *United States v. Roque*, 11 Phil. 422 (1908); *United States v. Quilatan*, 4 Phil. 481 (1906); *United States v. Sunga*, 11 Phil. 60 (1908); *United States v. Trono*, 11 Phil. 726; (1908); *United States v. Gimenez*, 34 Phil. 74 (1916); *United States v. Henry*, 25 Phil. 600 (1913).

Termination must not be with the express consent of the accused if jeopardy is to attach. *People v. Marapeo*, G.R. No. L-2600, March 30, 1950; *People v. Romero*, G.R. No. L-4517; *People v. Salico*, G.R. No. L-1567, October 13, 1949.

¹ Sec. 1, Rule 118—*Appeal*: From all final judgments of the Court of First Instance or Courts of similar jurisdiction, and in all cases in which the law now provides for appeal from said courts an appeal may be taken to the Court of Appeals or the Supreme Court as hereafter prescribed.

² NAVARRO, E., CRIMINAL PROCEDURE 339 (1952), citing *Mejia v. Alimorong* 4 Phil. 572, 576 (1905), and *People v. Makaraig*, 54 Phil. 904, 906 (1930).

³ 1 Phil. 670-671 (1903).

tigation. The Supreme Court relying on the *Fuster* doctrine quoted its observation in the case of *Collins v. Wolfe*,⁴ that "the defendant should have proceeded with the trial of the causes in the court below, and if final judgment is rendered against him, he can then appeal, and upon such appeal present the question which he is now seeking to have decided." The Supreme Court further noted that the Rules of Court had buttressed its opinion in the *Collins* case since the Rules specifically direct that if the defendant moves to quash before the pleading and the motion is overruled, "he shall immediately plead," which means that trial shall go on.

In the case of *People v. Virola and Alla*, the defendants were charged with serious slander by deed in the municipal court of Cabanatuan. The defendants moved to quash at the preliminary investigation on the ground that the complaint was signed by the offended party, the crime being a public offense which should be prosecuted by the corresponding public officials. The Municipal Court upheld this contention and dismissed the case. On appeal to the Court of First Instance, the judge of the Court reversed the appealed order and "remanded the case to the court of origin for further proceedings." From this reversal the defendants appealed.

The Supreme Court ruled that the appeal was premature because "it is practically appealing an order of the Court of First Instance that overrules defendants' motion to quash the information." The Supreme Court quoted its decision in the *Manuel* case at length and then advised the defendants "to defend themselves as best as they can, in the courts below, without waiving the point they have raised; and if convicted, they may appeal and then discuss the qualities they are now submitting before hand."

⁴ 5 Phil. 534, 535 (1905). See also *Arches v. Beldia*, G.R. No. L-2414, May 27, 1949.

⁵ Sec. 1, Rule 113.