ON PARLIAMENTARY FREE SPEECH

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> "Every citizen has as good a right to be protected by the laws from malignant scandal and false charges and defamatory imputations as a member of Congress has to utter them in his seat. If it were otherwise, a man's character might be taken away without the possibility of redress, either by the malice or indiscretion, or overweening self-conceit of a member of Congress.—STORY [1]

Ever since time begun, honor and reputation have always been regarded as man's priceless possession over which the law, like a jealous mistress that it is, has thrown its protective veil. We have come to regard defamatory imputations to be so vicious and malignant as to cast upon the utterer the well-deserved condemnation of society. Thus, we have the laws on libel and slander designed to render a man's good name inviolate. And yet, if we are to draw our conclusion from the theorization of some writers, there may, after all, be an area of human conduct where an absolute right to defame exists, and with the sanction of the fundamental law at that. The ultimate consequence is the obliteration of the individual personality as a sacrificial lamb before the sacred altar of public policy.

Parliamentary free speech has always been taken as a matter of course. We often hear it said that a member of Congress is immune from liability for defamation so long as he is discreet enough to avail himself of the deliberative sessions of the legislature, preferably the privilege hour. Whenever he has a grievance against another and would like to take it off his chest, all he has to do is to ask for the floor, deliver a short speech and throw in a long indictment of spicy words for flavor. The validity of this statement has not yet been squarely tested before the courts of justice. It seems that the illusory invulnerability of the cloak of immunity has so far successfully deterred the offended parties from seeking relief for the consequential damages to their honor and reputation.

The precedent-setting case of Mr. Sergio Osmeña, Jr. has exposed the concept of parliamentary immunity to the minute scrutiny of the country's legal minds. It might as well be considered one of the landmarks in the constitutional history of the Philippines, that is, if the Supreme Court ever decides to pass judgment on the merits, which is very doubtful, or to lay down a polite dictum in deference to a coordinate branch of the government as it did in the case of *Alejandrino v. Quezon*.[2]

The facts may be briefly mentioned. Mr. Osmeña, Jr. charged the President with having accepted a ₱10 million bribe to veto a bill nationalizing the rice and corn industry. In no uncertain terms, he said: "It is said, Mr. President, that you vetoed the measure nationalizing rice and corn because of a previous commitment to President Chiang Kai-Shek at Taipei. But ugly tongues are continually wagging that you had 10 million reasons for vetoing the measure, each reason cost ₱1."

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[1] 3 STORY, COMMENTARIES, 863 Bigelow's Ed. (1833).

[2] 46 Phil. 83.

The fury of the President may well be imagined when he set into motion the wheels of punitive punishment against the outspoken solon. A fifteen-man special committee was convened to investigate the charges. Mr. Osmeña was quick to seek refuge behind the constitutional grant of parliamentary immunity. Article VI, Section 15, provides that:

> "The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of peace, be privileged from arrest during their attendance at the sessions of Congress and in going to and in returning from the same; *and for any speech or debate therein, they shall not be questioned in any other place.* (Italics supplied.)

Mr. Osmeña refused to submit himself to the jurisdiction of the committee and to present evidence in support of the charges. He was found guilty and, by an overwhelming vote of the House. was suspended for fifteen months.

This paper is not in any way designed to pass judgment on Mr. Osmeña, Jr. nor to defend the President from the charges hurled against him. The writer has no desire to plunge into the political arena where passion could serve to confuse the issues. He does not wish to go beyond an inquiry into the history, nature and extent of parliamentary free speech.

HISTORICAL BACKGROUND OF PARLIAMENTARY FREE SPEECH

Sometime during the Middle Ages, we find the English monarchs and the Parliament engage in a relentless struggle for supremacy. The kings were ever jealous of their royal prerogatives and they resented the growing popularity of the lawmaking body. At the time when they still possessed the power of life and death over their subjects, they had no difficulty in repressing the exhuberant tendencies of the members of Parliament. The gallows were always ready to take the life of those who dared displease the king.

Though admitting the uncertainty of the event, some authorities relate the origin of parliamentary free speech with the occurrence of the *Haxey* case in 1399. During the reign of Richard II, Haxey was a minor clergyman and an aide of Parliament. On one occasion it became his unpleasant task to draw up a bill of particulars criticising the king. The bill, which was sent by the House of Commons to the House of Lords, complained of the following: "that sheriffs were continued in office for more than a year; that the place was not well kept on the Scottish March; that the abuse of livery and maintenance still existed to the same degree as before; that the king's household was unduly numerous and expensive." As expected, Richard turned royal purple with rage, presumably because he was then very conscious of the large size of his female entourage or he felt that it was about time to assert his powers. He demanded satisfaction and the Commons timidly pointed to Haxey as the culprit. The House of Lords, forced to take a hand in the matter by Richard, declared the act of Haxey as traitorous and sentenced him to death. Richard later pardoned him in recognition of his status as a churchman. It was left to his successor, Henry IV, to reverse the judgment of the House of Lords. This act is interpreted by some as tacit recognition of the right of members of the Parliament to free speech.[3]

In 1512, Richard Strode was indicted in court for sponsoring some bills which displeased the king. His trial prompted the Parliament to pass the Strode's Act declaring that any proceeding taken against legislators for "any bill, speak-

[3] Oppenheim, E., *Congressional Free Speech*, 8 Loyola Law Review 1, (1955-56) citing 4 OMAN, POLITICAL HISTORY OF ENGLAND 132-140 (1906),

ing, reasoning or declaring of any matter or matters concerning the Parliament shall be void." [4]

It then became the practice of Parliament to demand the immunity before every session to protect them from the ire of the king. In 1923, Sir Thomas More could only make a tentative claim.[5]

In 1621, the House of Commons, in a petition to James I, asserted that privileged speech pertained to it as a matter of right and by inheritance. James retorted that such privilege existed only by tolerance of the King. The Commons protested and James angrily decreed the dissolution of the entire Parliament. As an aftermath of this, Sir John Elliot and several others were imprisoned in 1629 for seditious speeches in Parliament. But this ruling, which was handed down by the Court of the King's Bench, was nullified by the House of Lords in 1667.[6] This marked the ascendancy of the privilege of free speech into the status of a right.

But it was only in 1689 when parliamentary immunity was accorded a solid legal basis when Article 9 of the English Bill of Rights provided that "the freedom of speech and debates or proceedings in Parliament ought not to be impeached in any court or place out of Parliament."

The English immigrants to America carried with them the tradition and their earliest fundamental law, the Articles of Confederation, contained a provision almost identical to that of the Bill of Rights.[7]

CASE LAW ON PARLIAMENTARY FREE SPEECH

The case of *Coffin v. Coffin*,[8] decided by the Massachussets Supreme Court in 1808, is the first judicial elaboration on the subject of free speech privilege. During the session of the House of Representatives of Massachussetts, Micajah Coffin, a representative from Nantucket, approached Russell, also a member of the House, at the passageway of the Chamber, and inquired as to the source of his information regarding the resolution for the appointment of an additional notary for the former's town. Russell answered that it was his relative, William Coffin, who provided him with the information. Upon learning this, Micajah said, "What, that convict?" Russell demanded an explanation and Micajah replied, "Don't thee know the business of the Nantucket bank?" Russell retorted, "Yes, but he was honorably acquitted." Whereupon Micajah said, "That did not make him less guilty, thee knows."

In an action for damages, Micajah Coffin was found guilty. On the nature of parliamentary immunity, the Court declared:

> "In considering this article, it appears to me that the privilege secured by it is not so much the privilege of the house as an organized body, as of each individual member composing it, who is entitled to this privilege, even against the declared will of the house. For he does not hold this privilege at the pleasure of the house, but derives it from the will of the people, expressed in the constitution, which is paramount to the will of either or both branches of the legislature. In this respect, the privilege here secured resembles other privileges attached to each member by another part of the constitution, by which he is exempted from arrest on mesne (or original) process during his going to, returning from, or attending the General Court. Of these privileges thus secured to each member, he cannot be deprived by a resolve of the house, or by an act of the legislature.

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[4] *Ibid.*
[5] Tenney v. Brandhove, 341, U.S. 367 (1950).
[6] Oppenheim, E., *supra* note 3.
[7] Fuhr, W., *Congressional Immunity from Libel and Slander*, 99 U. Pa. L. Rev., 960-77 (1951).
[8] 3 Am. Dec. 189 (1808); 4 Mass 1.

The court extended the privilege to the giving of a vote, the making of a written report, and to every act resulting from the nature and in the execution of the office. The member need not be in his place in the house for there are instances where he is entitled to the privilege though not within the walls of the representative's chambers.

But for a representative to invoke the privilege, he must be acting in the discharge of his official duty at the time of uttering the obnoxious words and his act or utterance must bear reasonable relevancy to the business before the house. For when they might, with equal pertinency, have been uttered at any other time or place, the privilege cannot be granted even under the liberal construction given to it by the court. "When a representative is not acting as a member of the house, he is not entitled to any of the privileges above his fellow citizens nor are the rights of the people affected if he is placed on the same ground on which his constituents stand."

In the 1930 case of *Cochran v. Couzens*,[9] it was alleged that Couzens had slandered Cochran in the Chamber of the U.S. Senate in the course of a speech, but not in the course of a debate on the floor, unofficially and not in the discharge of his official duties. The court held the speech to be still within the privilege though irrelevant to the matter before the house. Arguing in favor of such ruling, it said:

> "The framers of the Constitution were of the view that it would best serve the interests of the people if members of the House and Senate were permitted unlimited freedom in speeches or debates. The provision to that end is therefore grounded on public policy and should be liberally construed. Presumably, legislators will be guided in the exercise of their privileges by the responsibilities of their office; and that, moreover, in the event of their failure in that regard, they will be subject to discipline by their colleagues."

To the extent that the *Cochran* case disregards the requirement of relevancy, it may be regarded as having modified the *Coffin* case.

The case of *Tenney v. Brandhove*,[10] decided in 1950, is the most recent so far. The Tenney Committee was constituted by a resolution of the California Senate. Brandhove had circulated a petition among members of Congress alleging that the committee had employed him as a tool to smear another congressman as a "Red". In view of the conflict between this petition and a previous testimony given by Brandhove himself, the committee asked the local prosecutor to bring a criminal action against him. He was also summoned to appear for investigation but he refused to give testimony, whereupon he was prosecuted for contempt. The chairman also read into the record a statement concerning his criminal record. Brandhove sued the members of the committee under the Civil Rights Statute,[11] alleging that the defendants had deprived him of rights guaranteed by the constitution. He complained that all the proceedings taken against him were nothing more than a concerted effort to silence him.

The U.S. Supreme Court, speaking through Justice Frankfurter, held that the defendants were acting within the sphere of their legitimate activities and, as a consequence, were immune from liability. Reiterating the rationale of the

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[9] 75 Law Ed. 772 (1930); 42 F. 2d. 783; 51 S. Ct. 79; 59 App. DC 374.

[10] 341 U.S. 367 (1950).

[11] "Every person, who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

privilege of free speech, it said that "in order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offense."

Brandhove also assailed the motives of the committee members. To this, the the Court said: "The claim of unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon valor even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of a pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives."

Before going asy further, it should be observed that the cases discussed only contemplate situations where reliefs were sought by the offended parties outside of Congress, i.e., in the courts of justice. (It may be admitted that in most, if not all, cases, relief from the house itself would not be forthcoming). These cases do not dwell on the inherent power of Congress to discipline its own members, as will be discussed later.

ABSOLUTISM v. CONDITIONALISM

Discordance marks the authoritative opinions on the extent of the privilege. On one side, we have those who are of the belief that it is absolute. Thus, Professor Burgess says: "The fullest and most complete ventilation of every plan, object and purpose is necessary to wise and beneficial legislation. This could never be secured if the members should be held under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in debate, and frequently something more, is now reported to the public; but the danger to the general welfare from its curtailment is far greater than that to individuals from its exercise." [12]

The *Tenney* case, in saying that legislators should enjoy the "fullest liberty of speech" and ignoring the question of malice seems to recognize the absoluteness of the privilege. To the same effect is the following statement in the case of *Barsky v. United States*.[13] While each house may punish, in a proper case by imprisonment, its own members for disorderly behavior, for refusal to obey some rule made by the House for the preservation of order or for compelling the the attendance of absent members, the constitutional provision declaring that members of Congress cannot be questioned in any other place for any speech or debate in either House affords absolute immunity from liability for damages done by their acts or speech even though knowingly false or wrong."

The contrary opinion holds that the privilege is qualified and conditional. Professor Burgess himself bewails the absoluteness of the privilege. He says that "this is carrying the privilege of the members too far. If Representatives may say anything they will against private character in chambers, without fear of prosecution unler the laws of libel and slander, it seems to me only fair that other persons should be allowed to say anything they will about the Representatives under the restrictions imposed by that law."

Although the *Coffin* case may be regarded as having given the most liberal interpretation to the free speech privilege, Chief Justice Parsons did not forget

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[12] BURGESS, POLITICAL SCIENCE AND CONSTITUTIONAL LAW, Vol. II, p. 122.
[13] 167 F. 2d. 241; 92 Law Ed. 1767; 68 S. Ct. 1511; 83 App. DC 127.

that there may, after all, be limitations to it when he said that "a more extensive construction of the privilege of the members secured by this article I cannot give because it could not be supported by the language or manifest intent of the article."

In the *Tenney* case, the U.S. Supreme Court wisely declined to formulate a universal rule that would cover every imaginable specie of speech. Justice Frankfurter, realizing perhaps the danger of sanctioning absolute freedom of speech, made this saving statement: "We have only considered the scope of the privilege as applied to the facts of the present case. As Mr. Justice Miller said in the *Kilbourn* [14] case, 'if we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment, we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate.' "

In all the cases mentioned, there is an intimation that there may be things done of extraordinary character that would strip the wrongdoer of the immunity and leave him open to judicial redress.

Indeed, the proposition that the congressional privilege of free speech is absolute goes beyond the pale of reason and assumes to grant something which the sovereign people themselves would not grant except upon a real, and not imaginary, necessity. The rule of law cannot countenance any theory of absolute as it is so constantly fraught with evils. The grant of immunity was born out of necessity. Public policy spawned the proposition that "in order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary that he should enjoy the fullest liberty of speech." It is but rational that when necessity and public policy cease to be served, the privilege loses its proper function and its continued application would be unwarranted.

Coming to the possible limitations, we may borrow the criteria set down in the *Kilbourn* case, that is, the acts of the legislators sought to be condemned must be of an extraordinary character as to amount to "an utter perversion of their powers to a criminal purpose." It is obvious that treasonous and seditious speeches would fall under this specie of condemned acts. In fact, the Constitution excludes treason from its grant of the privilege from arrest. Also, the Rules of the House of Representatives include the utterance of treasonous remarks as one of the grounds for expulsion. And surely, the courts of justice will not hesitate for a moment to strip the utterer of his immunity and bring him down to the level of an ordinary traitor. The same may be said of seditious speeches. For who can seriously contend that the very same means intended to enhance public policy be employed to subvert it, with the immunity retaining its full effect in both instances. There could be no right more paramount to the safety of the state. Duty to the state may even demand from a man his own life. It is absurd that a mere privilege be accorded a more sacred treatment.

Regarding slanderous speech, more difficulty would be encountered in taking it out of the operation of the immunity since the damage it may occasion is limited to a few individuals. Nevertheless, we must bear in mind that the courts have always related the immunity to its rationale. In the *Coffin* case, immunity was denied because (1) the defamatory words had no reasonable relation to the official business before the House, and (2) the words were not spoken in the

[14] Kilbourn v. Thompson, 103 U.S. 168; 26 L. Ed. 377.

course of legislating. In other words, Coffin was not acting in the discharge of his official duty. The ruling in this case is still good law, considering that it has been quoted with approval in the recent cases of *Kilbourn v. Thompson* and *Tenney v. Brandhove*. Its logic and forceful clarity has not been weakened by the passing to time, notwithstanding the implication in the case of *Cochran v. Couzens* that relevancy is not an indispensable requisite.

Speech and action in the Parliament is admitted to be unquestioned and free. But this freedom from external influence or interference does not involve any unrestrained licence of speech with in the halls of the House. What is said or done by an individual member is privileged only insofar as it forms part of the proceedings of the House in its technical sense, i.e., the formal transaction of business with the Speaker in the chair or in a properly constituted committee. It would be simple mindedness to assert that anything spoken during proceedings forms part of it. Particular words or acts may be totally unrelated to the business being transacted. This is the test which may be useful in deciding how far crimes committed during a sitting may be entitled to privilege.[14a]

The requirement of relevancy is a reasonable one. It cannot be said that it may hamper effective debate unless we grant that legislators are so irresponsible as to be unable to distinguish the relation of their speeches to the business before the house. The question of relevancy eventually decides whether or not the speaker is acting as a member of the house. If in the course of a debate, a slanderous imputation is inseparably linked to a matter before the house, we may concede that the immunity is in no wise affected. But if, through malice or indiscretion, a speaker inserts some slanderous words merely to satisfy his private feelings, then he can no longer be considered as a member of the house because his speech "might, with equal pertinency, have been uttered at any other time or place." And, as decided in the *Coffin* case, "when a representative is not acting as a member of the house, he is not entitled to any of the privileges above his fellow citizens; nor are the rights of the people affected if he is placed on the same ground on which his constituents stand."

How about motive? The *Tenney* case has decided that the "claim of unworthy purpose does not destroy the privilege." But this statement stems from the fact that in most instances, motives are the mere subjective feelings of the actor and the reluctance of the courts in permitting an inquiry into such motives arises from the possibility that "in times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed." All these notwithstanding, it is very possible that there may be instances where, independently from political coloration, bad motives will show themselves readily. This is where relevancy comes in. When the utterance is relevant to the business before the house, the immunity still attaches, regardless of the good or evil motives of the utterer. But where the utterance is in no way related to official business, bad motive is indisputably presumed. For what other purpose is there in saying the slanderous words than to satisfy private feelings? In this case, the unworthy purpose is not merely claimed. It has become patent.

Quoted hereunder is a more extended discussion on malice as the test for the grant or denial of the privilege:

> "There is no case in the United States which has directly decided that the legislative privilege is an absolute one, and on principle, it is believed that the privilege should be deemed a conditional one. The grant of an absolute privilege should not be lightly im-

[14a] SIR T. ERSKINE MAY'S PARLIAMENTARY PRACTICE, Butterworth & Co. Ltd., London, 1957, p. 53.

> plied, for it is in derogation of the rights of the body of citizens as a whole. If a conditional privilege will serve to attain the same end, it should be preferred. In the case of an absolute privilege a showing of actual malice does not suffice to remove the protection afforded by the privilege, but in the case of a conditional privilege such a showing of actual malice is sufficient to remove the privilege as a defense to the action. It might well be asked whether these is a necessity for granting an absolute privilege in this matter to the legislator. It would seem that the constituent should be given that little protection which remains when he must show actual malice in the legislator. It is believed that perfect freedom of debate is only essential to effective representative government insofar as it brings forth searching and critical analysis plus such information as may be valuable in the handling of legislative business. It can hardly be argued that legislative business is aided in any way by the making of malicious statements. Malice can scarcely be deemed a guarantee of that free legislative action which the constitutional provisions on this point were designed to attain. The purpose of this privilege is such that there is no reason for granting an absolute immunity to the legislator. A conditional privilege allows the legislator all the freedom of debate which is of any benefit to representative government and the interest of the individual in preserving his reputation is of sufficient importance to warrant the doctrine of conditional privilege, that he may attain some measure of protection from defamation by a legislator, for it sometimes happens that legislators do abuse the privilege of exemption from action for defamation for speeches made in the legislature." [15]

The omnipresent public policy controls the formulation of legal principles. In the discussion of the extent of the parliamentary privilege of free speech, we are confronted by a conflict between public policy and the natural right of every person to possess and enjoy a good name. If we grant that the immunity should be absolute in order that public policy may be fully served, then we are putting public policy in the role of a tyrant, arbitrary, capricious and whimsical. It needs no argument to say that slander never serves a useful purpose, whether in or out of Congress. And a more vicious effect results when it is uttered in in the halls of Congress on account of the widespread publicity given to it in in the newspapers.

THE POWER OF CONGRESS TO DISCIPLINE ITS MEMBERS

Everything that has heretofore been said relates to the immunity of the legislators from liability enforceable before the courts of justice. By reasonable rules of construction, the constitutional grant of immunity (even though it be absolute) cannot possibly be regarded as a limitation on the power of Congress to discipline its own members. With unerring consistency, fundamental laws dating as far back as the English Bill of Rights have substantially used the phrase "For any speech or debate therein, they shall not be questioned in any other place."

The striking identity of the pertinent constitutional provisions carries a significance that cannot be ignored if words are to retain their meaning. When the Constitution provides that legislators cannot be questioned in any other place, it clearly leaves Congress free to discipline its own members for any abuse of the privilege, thus recognizing its inherent power of self-preservation.

According to Sir T. Erskine May, Article 9 of the English Bill of Rights gives its sanction to the Commons' claim to *exclusive jurisdiction* over words spoken in their own house and recognizes the right of each House to rule upon the conduct of its members in their parliamentary capacity.[15a] And the cases where members have been called upon to account and punished for offensive words spoken within the walls of the House *are too numerous to mention*. Some had been admonished, others imprisoned and in the Commons, some have been ex-

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[15] Field, *Constitutional Privileges of Legislators: The Exemptions from Arrest and Action for Defamation*, 9 Minn. L. Rev. 442 (1925) cited in Oppenheim E. *supra* note 3.

[15a] MAY, T. E., *op. cit., supra*, p. 52.

pelled. The unquestionable right of the Lords to commit a peer for words spoken in the House was recognized by the Court of King's Bench in the case of Lord Shaftesbury.[15b]

Several notions, some older than the Parliament itself justify the grant of exclusive jurisdiction. One such notion is that of the judicial pre-eminence of the High Court of Parliament as a court from which there is no appeal. The Lord's claim to be such a court cannot be doubted. The Common's claim is doubtful although during the reign of Henry VIII the decision of the Common's in a matter of privilege cannot be reversible in any other court. Another notion is that the members of a court have the right to be tried exclusively by that court.[15c]

Furthermore, all court decisions have interpreted the constitutional grant to refer only to "immunity from civil or criminal actions." The *Coffin* case uses the phrase "without fear of prosecution, civil or criminal." The *Barsky* case declares that "it affords absolute immunity from liability for damages." Thus, while the courts have closed their doors (though not totally) to those who seek relief from acts of legislators in abuse of their free speech privilege, they have judiciously refrained from interfering with the internal affairs of Congress. This attitude is clearly expressed in the case of *Cochran v. Couzens*: "Presumably, legislators will be guided in the exercise of their privilege (of free speech) by the responsibilities of their office; and that moreover, *in the event of their failure in that regard, they will be subject to discipline by their colleagues.*"

The disciplinary power of Congress is grounded on the right of self-preservation which inheres in every institution. It is in this regard that it may be regarded as coterminous with the power to punish contempt which has long been recognized as possessed by Congress even in the absence of a constitutional grant to that effect. It rests simply upon the implication that the right has been given to do that which is essential to the execution of some other and substantive authority expressly conferred. The power is therefore but a force implied to bring into existence the conditions to which the constitutional limitations apply. It is the means to an end, not the end itself. Hence, it rests upon the right of self-preservation to enable the public powers given to be exerted." [16]

Article VI, Section 10(3) of the Philippine Constitution recognizes the disciplinary power of Congress in the following terms:

> "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds of all its members, expel a member."

This provision recognizes the very same power that has been negatively preserved in Article VI, Section 15 where the immunity of a legislator is limited only to his being "questioned in any other place."

We have to proceed by analogy to determine whether an abuse of the free speech privilege would warrant expulsion. The Constitution itself does not mention specific grounds for expulsion. Any cause which the house deems sufficient constitutes a good ground for expulsion.[17] The power to expel should extend to all cases where the offense is such as in the judgment of the body is in-

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[15b] *Ibid.*, at p. 53.
[15c] *Ibid*, at p. 59.
[16] Marshall v. Gordon, 243 U.S. 521; Kilbourn v. Thompson, *supra* note 14; In Re Chapman, 166 U.S. 661; McGram v. Daugherty, 273 U.S. 135; Lopez v. De los Reyes, 55 Phil. 170 (1930).
[17] French v. Senate of California, 69 L.R.A. 556.

consistent with the trust and duty of a member or where other causes exist as to render a member unfit to continue occupying one of its seats.[18] And the courts cannot inquire into the justice of the decision or even so much as to examine the proceedings whether or not the proper opportunity for defense was given. The power of self-protection is a necessary and incidental power, to enable the house to perform its high functions. A member may be physically, mentally, or morally unfit; he may be affected with a contagious disease, or is insane, noisy, violent and disorderly, or in the habit of using profane, obscene and abusive language. These are sufficient causes for expulsion.[19]

Physical violence is one indubitable ground for expulsion as illustrated in the case of *Alejandrino v. Quezon*.[19a] Senator Alejandrino assaulted Senator de Vera in the halls of Congress after a speech made by the latter. For this act he was suspended for a period of one year. The Supreme Court recognized the validity of the ground for the disciplinary action but frowned upon suspension as a mode of punishment, since it deprives the congressional district of representation without that district being afforded the opportunity to fill the vacancy.

In the case of *In Re Chapman*,[20] a resolution was passed by the Senate ordering an investigation of the alleged shady dealings of some Senators in the stock market. In this connection, a stock broker was questioned as to whether his firm was employed by any Senator to buy or sell for him any of that stock whose market price might be affected by the Senate's action. He refused to answer, invoking the constitutional right against unreasonable searches and seizures. The court held that he may be compelled to answer. "According to the preamble and resolution of the Senate, the integrity and purity of its members had been questioned in a manner calculated to destroy public confidence in the body and in such respects as might subject members to censure or expulsion. The Senate, by the action taken, signifying its judgment that it was called upon to vindicate itself from aspersion and to deal with such of its members as might have been guilty of misbehavior and brought reproach upon it, obviously had jurisdiction of the subject matter of the inquiry it directed and power to compel attendance of witnesses and to require them to answer any question pertinent thereto."

The case of *Vera v. Avelino* [21] adds the following grounds: advocacy of the protection or at least toleration of graft and corruption in the government; evasion of taxes; perpetration of electoral frauds; attempted interference with or influencing of members of the judiciary in deciding cases pending before them.

Definitely, an abuse of the congressional privilege of free speech is just as pernicious and as destructive of the trust enjoyed by Congress as the acts aforementioned. The utterance of slanderous words in contemptuous disregard of another person's reputation is certainly beneath the dignity demanded of a member of Congress. As a measure of self-protection (for the preservation of dignity to command the respect of the constituents is just as of overriding importance as the preservation of order in proceedings of the house) a legislator who condescends to slander should be expelled. This much is conceded by the case of *Cochran v. Couzens* which intimates that in case a member of Congress fails to live up to the responsibility of his office and commits slander, he will be subjected to discipline by his colleagues.

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[18] 5 Am. Jur. 535.
[19] COOLEY'S CONSTITUTIONAL LIMITATIONS, 8th Ed. Vol. 1, p. 271; Anderson v. Dunn, 6 Wheat. 204.
[19a] 46 Phil. 83
[20] 166 U.S. 661; 41 L. Ed. 1154.
[21] 43 O.G. 3597.

CONCLUSION

The position of Mr. Osmeña, Jr. is rather difficult to assess. We cannot say with firm conviction that he accused the President with nothing but malice in his mind. Mr. Osmeña may have been motivated by his sincere desire to help rid the government of the evils that plague it. And for sure, the President is not above censure. But one count against Mr. Osmeña is his failure to explain or even attempt to explain the charges and offer evidence in his behalf. This gives rise to the presumption that there was not a bit of truth to what he said and that he said it with malice and intent to defame. For all we know, he might have only wanted to attract public attention to suit his political ambitions.

These are indeed times of "political passion" when "dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed." Political influence was visible in the move to expel Mr. Osmeña. If an action for defamation were brought in court, it would most probably fail. But by all indications, the resolution of the House of Representatives may not be annulled by the Supreme Court. At any event, Mr. Osmeña still has to redeem himself from the aspersion cast against him. Fundamental rules of fair play demand that he prove his charges or retract them.

CENSORSHIP OF THE MAILS

SAMILO N. BARLONGAY *

I. INTRODUCTION

It was not until the dispute arose between U. P. President Vicente G. Sinco and Postmaster General Enrico Palomar over communist mail that the subject of postal censorship was accorded close attention and thoughtful scrutiny particularly by lawyers, law students and legal minds in the Philippines.[1] Perhaps it was because, in the Philippines, unlike in the United States, foreign communist propaganda in the mails is not so voluminous and addressees of such mails are not too equally assertive of their rights to receive them. The case therefore, is rather novel. The Bureau of Posts, however has been confiscating communist publications markably at least since 1957.[2]

Scope—This paper deals with relevant Philippine statutes on the matter and, since Philippine jurisprudence insofar as it is pertinent to the topic, is scant, study is here made of the American program and procedure of the impounding and seizure of mails of like nature for a better elucidation of the subject and with occasional references to the case under comment in order to show how the case stands in relation to the views and principles obtaining. Discussion centers on the problems of legality of summary administrative action as against freedoms and personal rights guaranteed by the Constitution.

II. THE SINCO-PALOMAR CASE

Factual Background—Certain periodicals sent to U. P. President Vicente G. Sinco from two communist countries were seized by order of Postmaster General Enrico Palomar. A legal assistant of the U. P. President questioned the legality of Postmaster General Palomar's refusal to release the periodicals.

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[1] *The Manila Times*, Aug. 3, 1960.
[2] *The Manila Times*, Aug. 7, 1960.