# SHOULD THE ENROLLED BILL THEORY BE CONCLUSIVE UPON OUR COURTS?

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## I. INTRODUCTION

In the past months, several storms took the country for a spin and left in their wake the scars of devastation. But there was another kind of "storm" which visited the nation with great intensity and stirred a hornet's nest. This came as a surprise package in the form of the controversial act—R.A. No. 4065. It generated passionate and heated interchange of opinions not only between the tenants of Malacañang and Congress, on the one hand, and the City Mayor of Manila, on the other hand, but it also prompted the legal luminaries of the nation to give their views on the matter. And this culminated in the bringing of a suit in the Supreme Court for the resolution of this legal maze.

## II. BACKGROUND OF THE CASE

To better understand this present controversy would perforce require a narration of the facts attendant to the enactment of the Act. For from the facts emanate the law. *Actio oritur ius.* During the last regular session of Congress, H.B. No. 9266 was introduced in the House of Representatives which sought to amend certain provisions of the City Charter of Manila. Among the salient features of the bill are the granting of certain powers and privileges to the vice-mayor not hitherto enjoyed by him: such as when acting as mayor to exercise the same powers and duties as the mayor, including the power to appoint, suspend or dismiss employees and all such acts may not be reversed or modified by the mayor on his return; to have a minimum commutable housing allowance of ₱6,000; to appoint, supervise and control a group of at least 24 men in his office whom he will use against vice, immorality and criminality in the city, the vice-mayor and this group enjoying the powers of peace officers; and requiring confirmation by the Municipal Board of appointments made by the mayor.[1]

When this bill was forwarded to the Senate for its consideration, certain amendments were introduced deleting certain provisions of the bill as passed by the House of Representatives. According to Senator Arturo Tolentino, he introduced the amendments himself.

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* Vice-Chairman, *Philippine Law Journal* (1964-1965).

[1] The Manila Times, July 4, 1964, p. 1.

But upon investigation, he found that when the Minutes Division of the Senate returned the bill to the House after approval, an employee in the Minutes Division forgot to send a copy of the amendments to the House. The bill printed in final form still contained the deleted provisions. This bill was certified to by the secretaries and signed by the presiding officers of both houses of Congress.[2]

This present controversy prompted Mayor Antonio Villegas to file an action for declaratory relief with the Supreme Court to declare the Act invalid for the enrolled bill signed by the President did not contain the amendments approved by the Senate and concurred in by the House of Representatives. So it was not a law at all. This drew a favorable reaction from Senate President Ferdinand Marcos who declared his signature in the bill as invalid and without effect. He said that "(t)he Journal of the Senate as well as the transcript of the stenographic notes indicates that certain fundamental amendments to the bill that were approved by the Senate were not incorporated into the enrolled copy that was certified by the secretaries of both Houses and signed by the Speaker of the House as well as myself." [3]

Subsequently, President Macapagal voided his signature on the law, saying that "(i)t would be untenable and against public policy to convert into law what was not actually approved by the Houses of Congress." [4] Former Justice Montemayor, the Presidential legal adviser, opined "(t)hat there had been a misapprehension to the President of a wrong bill which he signed in the honest belief that it was the correct measure. Since there was no meeting of the minds as regards the Senate amendments which were not incorporated into the bill sent to Malacañang, it could not be truly said that it was passed by Congress. The initiative to correct a mistake devolved upon the President and the withdrawal of his signature may be considered as having the effect of making the law ineffective, even non-existent." [5]

Because of the avoidance of their signatures by the President and the Senate President, Mayor Villegas withdrew his petition for the declaration of the nullity of the Act. This was granted by the highest tribunal. But the dismissal of the petition drew varied interpretations. Vice-Mayor Herminio Astorga, the one actually benefited by R.A. No. 4065, interpreted the dismissal of the petition at the instance of Mayor Antonio Villegas as showing the exist-

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[2] The Manila Times, July 5, 1964, p. 1.
[3] The Manila Times, July 12, 1964.
[4] The Manila Times, August 1, 1964.
[5] *Ibid.*

ence and validity of the Act. He filed a special civil action for mandamus with the Supreme Court to compel Mayor Villegas to perform his duties under R.A. No. 4065. He called the withdrawal of the signatures on the law a dangerous precedent, saying that the stability of laws would be affected by mere pronouncements of executive officials. Only the courts can declare any law invalid. Since R.A. No. 4065 has not been amended by Congress or nullified by the Court, the statute should be enforced by the authorities.[6]

Even government lawyers, headed by Solicitor General Arturo Alafriz, said that the enrolled copy of the House Bill which was later tagged as R.A. No. 4065 did not pass Congress because House and Senate amendments were not acted upon by each chamber. The high court cannot declare valid a law which never passed the legislature, however well authenticated it may be by certification of the presiding officers. The official and public admissions of Senate President Marcos and Senate Secretary Regino Eustaquio that the enrolled copy of the measure could not have lapsed into law even if it bore the certifications of Congress leaders and the signature of the President.[7]

To further confuse an already confused case, Mayor Villegas told the Supreme Court that as an official subordinate to President Macapagal, he is duty-bound to respect the presidential declaration that R.A. No. 4065 is not a law at all. The President and lower executive officials are not required to execute a statute which they believe to be unconstitutional and void, or which was not passed by Congress. When the President and Senate President Marcos cancelled their signatures on R.A. No. 4065, they acted within their respective powers as participants in the law-making process. The signature withdrawals are political acts performed by heads of two co-equal government departments and are not subject to review by the courts under the doctrine of separation of powers.[8]

## III. STATEMENT OF THE PROBLEM

The present case is of transcendental importance in view of the fact that there are many legal issues interwoven in it. That to entangle these varied issues would necessitate a second look at the laws and jurisprudence of our country as well as those obtaining in other jurisdictions. It may also require the application of reason, experience and a realistic approach to the problem. The present case begs the problem of discussing the authority of the

[6] The Manila Times, September 5, 1964.
[7] The Manila Times, October 3, 1964.
[8] The Manila Times, October 6, 1964.

court to pass judgment upon the acts of the legislature; the legal effect of the signature of the presiding officers of both Houses of Congress; the power and effect of the withdrawal of their signatures by the presiding officers of Congress as well as the power of the President to cancel his signature from a bill.

## IV. EVIDENTIARY VALUE OF THE ENROLLED BILL

Before discussing the evidentiary value given by the courts to the enrolled bill, it is necessary to discuss its nature and character. An enrolled bill, in legislative parlance, is a reproduction or copy of the identical bill passed by both houses of the general assembly (Congress), an exact copy of what remains of the original bill as introduced by its author after such alteration and amendments as the legislature may adopt; and when a bill which has been introduced into the legislature has been finally passed by both houses, signed by the governor (President), and filed away by the secretary of state (public archives) as the highest evidence of what the law is, it is called an enrolled bill.[9] A bill will be spoken of as enrolled only when it bears the signatures of the presiding officers of the two houses and purports to have been passed in appropriate form.[10]

The enrolled act is only somebody's certificate and copy, because the effective legal act of enactment is the dealing of the legislature with the original document, i.e., the 'viva voce' vote. The Legislature has not dealt by vote with the enrolled document; the latter therefore can be only a certificate and copy of the transactions representing the enactment. The enrollment is thus not a record in the sense of a judicial record, i.e., the act done in writing.[11]

Although the Constitution does not expressly require bills that have passed Congress to be attested by the signatures of the presiding officers of the two houses, usage, the orderly conduct of legislative proceedings, and the rules under which the two bodies have acted since the organization of the government, require that mode of authentication.[12] What the Constitution provides is that "Each House shall keep a Journal of its proceedings."[13] And that "No bill shall be passed by either House unless it shall have been printed and copies thereof in its final form furnished its Members at least three calendar days prior to its passage, except when the President shall have certified to the necessity of its immediate enactment. Up-

[9] 82 *Corpus Juris Secundum*, 93-94.
[10] 1 SUTHERLAND, STATUTORY CONSTRUCTION, 222-247 (3rd ed., 1943).
[11] IV WIGMORE ON EVIDENCE, 683 (3rd ed.).
[12] Field v. Clark, 143 U.S. 649.
[13] Section 10(4), Art. VI, PHILIPPINE CONSTITUTION.

on the last reading of a bill no amendment thereof shall be allowed, and the question upon its passage shall be taken immediately thereafter, and the yeas and nays entered on the Journal." [14]

However, the Rules of the Senate and the House of Representatives grant to the presiding officers of both houses of Congress certain authority, among them, is "(t)o sign all acts." [15] The Rules of the Senate grants to the Secretary of the Senate the power "(t)o certify all acts, orders, and resolutions approved by the Senate, and to stamp them with its official seal, which shall be under his custody." [16] The Senate shall keep and preserve a Journal of its sessions which shall be printed and published. The said Journal shall reflect in detail everything that has been said, done and read in the sessions of the Senate, in such a manner that it shall express faithfully everything that takes place therein.[17]

The Rules of the House of Representatives grants to the House Secretary the following powers and duties: (t)o refer to the proper committee as the Speaker of the House may direct such bill and other documents as may be presented or indorsed to the House of Representatives, as well as the bill and other matters received from the Senate of the Philippines;[18] and certify to the approval of all acts and resolutions duly approved.[19] The Secretary, without need of any express order, shall transmit to the Senate and ask for its concurrence in, all the bills and joint and concurrent resolutions approved by the House, or the amendments of the House to the bills and resolutions of the Senate, to the bills of the House which have been accepted, he shall forthwith notify the Senate of the action taken as the case may be. And if the measures approved without amendments are bills or resolutions of the Senate, or if amendments of the Senate to the bills of the House have been accepted, he shall forthwith notify the Senate of the action taken.[20]

There are several views with regard to the evidentiary value given to the enrolled bill. But for my purpose, I would like to classify them into two categories, namely, those that give conclusive weight to the enrolled bill [21] and those that consider the enrolled

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[14] Section 21(2), Art. VI, PHILIPPINE CONSTITUTION.

[15] Section 3(e), Chapter III, Rules of the Senate; Section 1(d), Rule 11, Rules of the House of Representatives.

[16] Section 6(h), Chapter V, Rules of the Senate.

[17] Section 49, Rules of the Senate.

[18] Section 1(i), Rule 3, Rules of the House of Representatives.

[19] Section 1(j), Rule 3, Rules of the House of Representatives.

[20] Section 9, Rule XII, Rules of the House of Representatives.

[21] See Note 12, *supra;* U.S. v. Ballin, 144 U.S. 1, cited in 2 WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES, 652-654 (2d ed., 1929); Sherman v. Story, 30 Cal. 253, 89 Am. Dec. 93 (1886); Evans v. Browne, 30 Ind.

bill as *prima facie* correct, but evidence from the journals or other extrinsic sources is admissible to strike the bill down.[22] The first rule giving conclusive weight to the enrolled bill is the one prevailing in England. In the United States, "(i)n point of numbers, the jurisdictions are divided almost equally pro and con x x x. The United States is on the side in favor of the rule."[23] The second rule which considers the enrolled bill as *prima facie* correct, but evidence from the journals or other extrinsic sources is admissible to strike the bill down, though not the majority rule, seems at the present time to be gaining adoption in many states.[24] The Supreme Court of the Philippines, in one case,[25] decided that a duly authenticated bill or resolution imports absolute verity and is binding upon the courts.

The rule which gives conclusive weight upon the enrolled bill states that the signing by the Speaker of the House of Representatives, and, by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two houses that such bill is one that has passed Congress. It is a declaration by the two houses, to the President, that a bill, thus attested, has received, in due form, the sanction of the legislative branch of the government, and that it is delivered to him in obedience to the constitutional requirement that bills which pass Congress shall be presented to him. And when a bill thus attested, receives his approval, and is deposited in the public archives, its authentication, as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled act in the custody of the Secretary of State, and having the official attestation of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress.[26]

514, 95 Am. Dec. 710 (1869); State ex rel Pangborn v. Young, 32 N.J.L. 29 (1866).

[22] In re Roberts, 5 Colo. 525 (1881); People ex rel. Marville v. Leddy, 53 Colo. 109, 123 Pac. 824 (1912); Massachusetts Mut. Life Insurance Co. v. Colorado Loan and Trust Co., 20 Colo. 1, 36 Pac. 793 (1894); Ridgely v. City of Baltimore, 119 Md. 567, 87 Atl. 969 (1913); State v. Adams, 323 Mo. 729; Cox v. Maguery, 126 App. 669, 105 S.W. 675 (1911); State v. Schultz, 44 N.D. 269, 174 N.W. 81 (1911); Bansdall Refining Corporation v. Welsh, 64 S.D. 647, 269 N.W. 853 (1936); Charleston Nat. Bank v. For, 119 W. Va. 438, 194 S.E. 4 (1937).

[23] See Note 12, Field v. Clark, *supra*.

[24] See Note 22, *supra*.

[25] Mabanag v. Lopez Vito, 78 Phil. (1947).

[26] Field v. Clark, *supra*.

It has been declared that the rule against going behind the enrolled bill is required by the respect due to a co-equal and independent department of the government,[27] and it would be an inquisition into the conduct of the members of the legislature, a very delicate power, the frequent exercise of which must lead to endless confusion in the administration of the law.[28] The rule is also one of convenience, because courts could not rely on the published session laws, but would be required to look beyond these to the journals of the legislature and often to any printed bill and amendments which might be found after the adjournment of the legislature.[29] Otherwise, after relying on the *prima facie* evidence of the enrolled bills, authenticated as exacted by the constitution, for years, it might be ascertained from the journals that an act theretofore enforced had never become a law.[30] In this respect, it has been declared that there is some uncertainty as to what the law is without saying that no one may be certain that an act of the legislature has become such until the issues have been determined by some court whose decision might not be regarded as conclusive in an action between the parties.[31]

The first reason is based on the respect due to a co-equal and independent branch of the government. It stems from the doctrine of separation of powers. But such doctrine came to be accepted only as a counteracting measure against the assumption of arbitrary power by one person or a few. As one noted writer would put it, (t)he underlying reason of this principle is the assumption that arbitrary rule and abuse of authority would inevitably result from the concentration of the three powers of government in the same person, body of persons, or organ.[32] The dispersal of powers is therefore the means to that end.

The doctrine of separation of powers is not without limitation. It has to be followed only to the extent that it would be in pursuance of its legitimate purpose but not to the extent that it would be the very negation of its purpose. For to do so would render the doctrine nugatory and an absurdity. So while we have the trichotomy of governmental powers into legislative, executive and judicial, each supreme within its own sphere and independent from the other, yet by far, the judicial branch is charged with the adjudica-

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[27] Twin City Nat. Bank v. Nehbur, 167 U.S. 196.
[28] Pacific Railway Co. v. Governor, 23 Mo. 353, 66 Am. Dec. 673.
[29] State ex rel. Harmond v. Lynch, 169 Iowa 148, 151 N.W. 81.
[30] *Ibid.*
[31] *Ibid.*
[32] Vicente Sinco, PHILIPPINE CONSTITUTIONAL LAW, 62 (2nd ed., 1960).

tion of conflicting claims of authority,[33] the exercise of arbitrary power as well as the infringement of individual rights.

It is a fundamental rule in constitutional law that the courts will refuse to indulge a presumption of irregularity.[34] Every presumption should be indulged in favor of the regularity of legislative action.[35] But the question whether a seeming act of the Legislature became a law in accordance with the Constitution is a judicial one, to be decided by the courts.[36] That whenever a question arising in a court of law of the existence of a statute, or of the time when a statute takes effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question.[37]

So that in the determination of the validity of a statute, the courts may not only look to the legislative journals, but may also examine other records of the legislature to determine whether or not constitutional requirements with respect to the passage of a bill were observed, and that an enrolled bill may be impeached as to what bill was enacted and approved by the governor or President, by an inspection of the original bill, indorsements thereon, journals and other official records in the office of the Secretary of State.[38] For as aptly stated:

> "If such matters cannot be inquired into, the wholesome restrictions which the Constitution imposes on legislative and executive actions become a dead letter, and court would be compelled to interfere. The fact that the law-making power is limited by the rules of government, and its acts receive judicial exposition from the Courts, carries with it, by implication, the power of inquiring how far those exercising law-making power have proceeded constitutionally. . . . It is said that parties would in every case dispute the existence of the law, and that such practice would lead to confusion and perjury. . . . (T)his is a question for the Court. And should not the citizen whose life, property, or liberty is made forfeit by the operation of a particular law, be allowed to show to the court, if it is not advised of the fact, that the same was passed in violation of his constitutional rights, or that it has been placed among the archives of government by fraud or mistake, and never had a legal existence? Is there no way of ascertaining whether officers have acted contrary to their

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[33] Angara v. Electoral Commission, 63 Phil. 137.
[34] McPhail v. Latouche Packing Co., 8 Alaska 297, cited in 82 C.J.S. 136.
[35] Crawford County Levee Dist. v. Cozart, 78 S.W. 2d 378.
[36] South Ottawa v. Perkins, 94 U.S. 260; Walnut v. Wade, 103 U.S. 683; Post v. Kendall, 105 U.S. 667; and Duncan v. McCall, 139 U.S. 449, 11 Sup. Ct. 573, 35 L. Ed. 219.
[37] Gardner v. Barney, 6 Wall. 499, cited in the case of U.S. v. Ballin, *supra*.
[38] Helena Water Co. v. Helena, 216 S.W. 26; Rice v. Lanoke-Cabot Road Impr. Dist., 221 S.W. 179.

> constitutional obligations? It is no sufficient answer that we must rely on the integrity of the executive or other officers, and that the record of facts is conclusive evidence of such acts. Our notions of free institutions revolt at the thought of placing so much power in the hands of one man, with no guard upon it but his own integrity, and our Constitution has wisely so distributed the powers of government as to make one a check upon the other thereby preventing one branch from strengthening itself at the expense of the coordinate branches and of the public. Such evidence should be of the most satisfactory character; and there is less to be apprehended from the subornation of witnesses, subject to the tests which the law imposes, than from the exercise of so great a power without restraint or accountability." [39]

Another reason adduced in support of the conclusiveness of the enrolled bill is that to go beyond the enrolled bill would unsettle the entire statute law of the state. It would create uncertainty in the law. While certainty in the law is a desired policy, and there is a presumption of the validity of its enactment, are we not to allow inquiry upon the facts surrounding its enactment for the proper administration of justice? This reason again shows a perverted evaluation of human values. Is justice to be sacrificed for the sake of convenience?[40] And suppose less than a quorum of each House may, by the aid of the presiding officers, impose laws upon the State in defiance of the inhibition of the Constitution, shall we not go beyond the enrolled bill, just because it imports absolute verity upon the courts? But it is argued that this cannot be absolutely avoided. It applies to all agencies.[41] It is not fit that the judiciary should claim for itself a purity beyond all others; nor has it been able at all times with truth to say that its high places have not been disgraced.[42]

The answer is unconvincing. That there can be and there have been blundering, disgraceful, or corrupt judicial officers is no reason why arbitrary presiding officers and members of the legislature should be allowed to have their way unchecked. Precisely the system of checks and balances established by the Constitution presupposes the possibility of error and corruption in any department of government and the system is established to put a check on them.[43]

In the United States where the Federal Supreme Court adheres to the conclusiveness of the enrolled bill, there might be a plausible reason for the adoption of the conclusive rule. The Rules of the Senate of the U.S. Federal Congress provides that:

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[39] Fowler v. Pierce, 2 Cal. 165, cited in IV Wigmore, *supra*.

[40] Dissenting opinion of Mr. Justice Perfecto in case of Mabanag v. Lopez Vito, *supra*.

[41] IV WIGMORE, Note 11, *supra*.

[42] *Ibid.*

[43] See Note 40, *supra*.

> "(5) The Secretary of the Senate shall examine all bills, amendments, and joint resolutions before they go out of the possession of the Senate, and shall examine all bills and joint resolutions which shall have passed both Houses, to see that the same are *correctly enrolled*, and when signed by the Speaker of the House and the President of the Senate, shall forthwith present the same when they shall have originated in the Senate, to the President of the United States and report the fact and date of such presentation to the Senate." [44] (Emphasis supplied).

There is no similar provision in the Rules of the Senate and the House of Representatives of the Philippine Congress. From a perusal of the above-cited provision, there is a duty of the Senate Secretary to examine all bills, amendments, and joint resolutions before they go out of the possession of the Senate and to examine all bills and joint resolutions which have passed both Houses, to see the same are *correctly enrolled.* This safeguard is necessary to obviate the danger that the enrolled bill may not be the same as the bill actually passed by Congress. No such duty exists on the part of the secretaries of both Houses of our Congress. In view of this difference, it is doubtful whether the enrolled bill should be given conclusive effect, in spite of the ruling of our Supreme Court in the *Mabanag v. Lopez Vito* case.[45]

It is a sad commentary that "smuggling" of bills is committed by members of Congress, that is, a bill is passed even without undergoing the procedure laid down in the Constitution and the respective rules of each House. How can we give conclusive effect upon a bill which may not have even undergone the process of legislation? Are we to sanctify fraud or irregularities, merely, because the presiding officers of our Congress have affixed their signatures? In this case, the danger of collusion among the presiding officers of Congress, the President, committee on enrolled bill and clerks in making a law that was never passed is not a remote possibility.

Just because the Supreme Court of the United States have upheld the conclusiveness of the enrolled bill in a number of cases,[46] are we to follow it? There should be no blind adherence to precedents and subservience to anything which is of foreign origin. The facts and circumstances which prompted the foreign court to make a pronouncement on a certain case might be different from ours. What should guide us in the adoption of the jurisprudence of other jurisdictions are their *proper applicability* to our *distinctly Filipino*

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[44] Rule XIV (5), Standing Rules of the Senate, Senate Manual, prepared under the direction of the Senate Committee on Rules and Administration, 86th Congress, Senate Document No. 14 at page 15.

[45] See Note 25, *supra.*

[46] See Notes 12 and 21, *supra.*

legal problems. The persuasiveness of the reasons in support of a particular decision should also be taken into account. Indiscriminate adoption should not be the rule.

## V. APPLICABILITY OF THE MABANAG v. LOPEZ VITO DOCTRINE

In the case of *Mabanag v. Lopez Vito*,[47] the court held that a duly authenticated bill or resolution imports absolute verity and is binding upon the courts. This is in line with the view adopted in England, the United States and a number of states in the United States. An analysis of the above-cited case will show that the ruling laid down there should not be controlling in future cases that may arise. Such a general principle would be inadequate to cope with cases having factual differentiation.

The case of *Mabanag v. Lopez Vito*,[48] was a petition for prohibition to prevent the enforcement of a Congressional resolution proposing an amendment to the Constitution of the Philippines to be appended as an ordinance. The petitioners were three senators who were suspended and eight representatives who were not allowed to sit in the lower house although not formally suspended. Petitioners alleged that if they had been counted, the affirmative votes in favor of the proposed amendment would be short of the 3/4 vote in either branch of Congress.

One of the grounds adduced in denying the petition for prohibition is that an enrolled bill or resolution duly authenticated imports absolute verity and is binding upon the courts. The Court made extensive use of the rulings of the U.S. Supreme Court and various states following the rule on the conclusiveness of the enrolled bill. But one peculiarity of the decision is that said rule "conforms to the expressed policy of our law-making body." The Court cited Section 313 of the Old Code of Civil Procedure, as amended by Act No. 2210 which provides that:

> "Official documents may be proved as follows; . . . (2) the proceedings of the Philippine Commission, or of any legislative body that may be provided for in the Philippine Islands, or of Congress, by the journals of those bodies or of either house thereof, or by published statutes or resolutions, or by copies certified by the clerk or secretary, or printed by their order; Provided, That in the case of Acts of the Philippine Commission or the Philippine Legislature, when there is an existence of a copy signed by the presiding officers and secretaries of said bodies, it shall be conclusive proof of the provision of such Acts and of the due enactment thereof."

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[47] See Note 25, *supra*.
[48] *Ibid.*

It is doubtful whether said law is still in force at the time the said case was decided. This was applicable at the time prior to the adoption of our Constitution. An apt answer to the majority decision in said case is the learned dissenting opinion of Mr. Justice Perfecto [49] that:

> "Section 313 alluded to enumerate the evidence that may prove the procedure of the defunct Philippine Commission or of any of the legislative body that may be provided in the Philippines, with the proviso that the existence of a copy of acts of said Commission or the Philippine Legislature, signed by the presiding officers and secretaries of said bodies, is a conclusive proof of the provision of such acts and of the due enactment thereof.
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> "This proviso has been repealed by its non-inclusion in the Rules of Court. Sections 5 and 41 of the Rule 123 show conclusively that the Supreme Court, in making the rules effective since July 1, 1940, rejected the proviso as unreasonable and unjust. Section 5 provides that we may take judicial notice of the official acts of Congress and section 41 provides what evidence can be used to prove said official acts, but nowhere in the rules can a provision be found that would make conclusive a certification by the presiding officers and secretaries of both Houses of Congress even if we know by conclusive evidence that the certification is false."

The present case can be distinguished from the *Mabanag* case. The latter is concerned with the validity of the enactment of a resolution which did not require the signature of the President; the former required the signature of the President as it was in the nature of a bill. In the present case, the Senate President and the President declared their signatures void and without effect. In the former case, there was no such declaration. The disclaimer by the Senate President and the President of their signatures on the enrolled bill is a pivotal fact in the resolution of the present case.

In the case decided by the Philippine Supreme Court and the cases decided by the Federal Supreme Court of the United States, there were no disclaimer of their signatures by the presiding officers or of the President. The question would naturally crop up as to the legal effect of their signatures. Are their signatures a constitutive element for the validity of legislative enactments? Nowhere does our Constitution or our laws provide that the signatures of the presiding officers are necessary for the validity of legislative enact-

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[49] See Note 40, *supra;* Section 13, Art. VIII of the Philippine Constitution which was adopted after the Old Code of Civil Procedure, provides that "The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same." Sections 5 and 41 of Rule 123 of the Rules of Court are now Sec. 1, Rule 129 and Sec. 25, Rule 132 of the New Rules of Court respectively. The New Rules of Court superseded the Rules of Court of 1940 as of January 1, 1964.

ments. Nor does it require the certification by the secretaries. However, the orderly conduct of legislative proceedings, and the rules under which the two bodies have acted since the organization of the government, require that mode of authentication.[50]

So that with or without the signatures of the presiding officers, the validity of legislative enactment is not affected. What then is the purpose of the signatures of the presiding officers? The purpose is to furnish evidence of the due passage and validity of the bill,[51] and to signify to the governor (President) what bills are ready for his approval or rejection.[52] It authenticates the bill and affords a sure means of identification.[53] But if the presiding officers subsequently withdraw their signatures, on the ground that certain irregularities were committed in the enactment of a bill, i.e., amendments were not included in the enrolled bill, shall the court hold the enrolled bill conclusive as to its due enactment? There is authority to the effect that the signatures of its officers and the approval of the Governor (President) *cannot, unquestionably, make that law which has not been enacted by the Legislature.* They only furnish evidence, conclusive or otherwise, as may be held, of the enactment of the alleged law by the Legislature.[54] And a question as to the existence of a law is a judicial one, and it is for the courts to determine whether there is such a law or not,[55] then the journal of either house of the Legislature and other records of the Legislature may be inquired into for the resolution of the question.[56]

Besides, it may happen that through inadvertence of the enrolling clerk or committee, errors may be committed. In which case, the enrolled bill may not be the same as that actually passed by the Legislature. The enrolling clerk or committee has no power or authority to modify in any respect a bill passed by the legislature.[57] In those jurisdictions where the enrolled act is not regarded as conclusive as to the existence and contents of the bill, it is generally held that the enrolled bill as presented to, and approved by, the governor must be the same as that passed by the Legislature,[58] at

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[50] See Note 12, *supra.*
[51] State v. Kiesewetter, 12 N.E. 807.
[52] Taylor v. Wilson, 22 N.W. 119.
[53] See Note 51, *supra.*
[54] Blessing v. Galveston, 42 Tex. 641, 656 cited in IV Wigmore, *supra.*
[55] See Note 36, *supra.*
[56] See Note 38, *supra.*
[57] Rice v. Lanoke-Cabot Road Improvement Dist., *supra.*; State v. State *ex rel.* Board of Com'rs. of Laramie County v. Wright, 163 P. 2d 190, 194.
[58] State *ex rel.* Schwartz v. Bledsoe, 31 So. 2d 457, 159, Fla. 243; Gyn v. Hordee, 110 So. 343, 92 Fla.

least in substance[59] and in legal effect,[60] and where, through some mistake in the enrollment of the bill, a material change has been made,[61] or an altogether different bill is presented to, and signed by the governor (President),[62] it does not become a law; nor has it been held, will the bill become a law where a serious clerical error occurs.[63]

## VI. CONCLUSION

This paper is not intended to settle the issues presented by the present case but to provide a springboard for further discussion of the subject. There is a need for thorough investigation, reinterpretation and analysis of the cases decided in the light of our own experiences. However, I submit that the enrolled bill should not be given conclusive weight to the extent of preventing the appreciation of extrinsic evidence other than the enrolled bill. The enrolled bill should be given only *prima facie* presumption of validity, but it may be attacked by any clear, satisfactory, and convincing evidence to show the contrary.

The rights of individuals may be involved and to deny them the right to avail of the means of impeaching the law by virtue of the conclusiveness of the enrolled bill is to afford them without any remedy. The court should not shirk from its duty of protecting individual rights against governmental excesses. The fears apprehended in impeaching the enrolled bill is remote. It will promote greater mischief, instead. If the bill is really enacted in the regular course, no danger will result. Besides, that will make our legislators and their subordinates more careful and cautious in the enactment of laws, conscious of their duties, lest any excess be met with public and judicial disapprobation.

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[59] Bull v. King, 286 N.W. 311, 205 Minn. 427.

[60] *Ibid.*

[61] Beacon Club v. Buder, 52 N.W. 2d 165, 332 Mich. 412, 343 U.S. 971; State *ex rel.* Williams v. Roff, 183 P. 2d 223, 163 Kan. 502.

[62] People v. Lueders, 119 N.E. 339, 283 Ill. 287.

[63] Minnesota Mut. Life Ins. Co. v. Johnson, 4 N.W. 2d 625, 212 Minn. 571—"Where the senate engrossing staff failed to delete lines from house bill relating to riders limiting coverage as provided by senate amendment and act approved by the governor contained such deleted lines, there was a clerical error that vitiated the Act."