

**JEAN L. ARNAULT, PETITIONER, VS. LEON NAZARENO,
SERGEANT-AT-ARMS, PHILIPPINE SENATE, AND EUSTAQUIO
BALAGTAS, DIRECTOR OF PRISONS, RESPONDENTS.**

G.R. No. L-3820. July 18, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

This is an original petition for habeas corpus to relieve the petitioner from his confinement in the New Bilibid Prison to which he has been committed by virtue of a resolution adopted by the Senate on May 15, 1950, which reads as follows:

"Whereas, Jean L. Arnault refused to reveal the name of the person to whom he gave the P440,000, as well as answer other pertinent questions related to the said amount; Now, therefore, be it

"Resolved, That for his refusal to reveal the name of the person to whom he gave the P440,000 Jean L. Arnault be committed to the custody of the Sergeant-at-Arms and imprisoned in the New Bilibid Prison, Muntinlupa, Rizal, until discharged by further order of the Senate or by the special committee created by Senate Resolution No. 8, such discharge to be ordered when he shall have purged the contempt by revealing to the Senate or to the said special committee the name of the person to whom he gave the P440,000, as well as answer other pertinent questions in connection therewith."

The facts that gave rise to the adoption of said resolution, insofar as pertinent here, may be briefly stated as follows:

In the latter part of October, 1949, the Philippine Government, through the Rural Progress Administration, bought two estates known as Buenavista and Tambobong for the sums of P4,500,000 and P500,000, respectively. Of the first sum, P1,000,000 was paid to Ernest H. Burt, a nonresident American, thru his attorney-in-fact in the Philippines, the Associated Estates, Inc., represented by Jean L. Arnault, for alleged interest of the said Burt in the Buenavista Estate. The second sum of P500,000 was all paid to the same Ernest H. Burt through his other attorney-in-fact, the North Manila Development Co., Inc., also represented by Jean L. Arnault, for the alleged interest of the said Burt in the Tambobong Estate.

The original owner of the Buenavista Estate was the San Juan de Dios Hospital. The Philippine Government held a 25-year lease contract on said estate, with an option to purchase it for P3,000,000 within the same period of 25 years counted from January 1, 1939. The occupation republic of the Philippines purported to exercise that option by tendering to the owner the sum of P3,000,000 and, upon its rejection, by depositing it in court on June 21, 1944, together with the accrued rentals amounting to P324,000. Since 1939 the Government has remained in possession of the estate.

On June 29, 1946, the San Juan de Dios Hospital sold the Buenavista Estate for P5,000,000 to Ernest H. Burt, who made a down payment of P10,000 only and agreed to pay P500,000 within one year and the remainder in annual installments of P500,000 each, with the stipulation that failure on his part to make any of said payments

would cause the forfeiture of his down payment of P10,000 and would entitle the Hospital to rescind the sale to him. Aside from the down payment of P10,000, Burt has made no other payment on account of the purchase price of said estate.

The original owner of the Tambobong Estate was the Philippine Trust Company. On May 14, 1946, the Philippine Trust Company sold said estate for the sum of P1,200,000 to Ernest H. Burt, who paid P10,000 down and promised to pay P90,000 within nine months and the balance of P1,100,000 in ten successive annual installments of P110,000 each. The nine-month period within which to pay the first instalment of P90,000 expired on February 14, 1947, without Burt's having paid the said or any other amount then or afterwards. On September 4, 1947, the Philippine Trust Company sold, conveyed, and delivered the Tambobong Estate to the Rural Progress Administration by an absolute deed of sale in consideration of the sum of P750,000. On February 5, 1948, the Rural Progress Administration made, under article 1504 of the Civil Code, a notarial demand upon Burt for the resolution and cancellation of his contract of purchase with the Philippine Trust Company due to his failure to pay the installment of P90,000 within the period of nine months. Subsequently the Court of First Instance of Rizal ordered the cancellation of Burt's certificate of title and the issuance of a new one in the name of the Rural Progress Administration, from which order he appealed to the Supreme Court.[1]

It was in the face of the antecedents sketched in the last three preceding paragraphs that the Philippine Government, through the Secretary of Justice as Chairman of the Board of Directors of the Rural Progress Administration and as Chairman of the Board of Directors of the Philippine National Bank, from which the money was borrowed, accomplished the purchase of the two estates in the latter part of October, 1949, as stated at the outset.

On February 27, 1950, the Senate adopted its Resolution No. 8, which reads as follows:

"RESOLUTION CREATING A SPECIAL COMMITTEE TO INVESTIGATE THE BUENAVISTA AND THE TAMBOBONG ESTATES DEAL.

"WHEREAS, it is reported that the Philippine Government, through the Rural Progress Administration, has bought the Buenavista and the Tambobong Estates for the aggregate sum of five million pesos;

"WHEREAS, it is reported that under the decision of the Supreme Court dated October 31, 1949, the Buenavista Estate could have been bought for three million pesos by virtue of a contract entered into between the San Juan de Dios Hospital and Philippine Government in 1939;

"WHEREAS, it is even alleged that the Philippine Government did not have to purchase the Buenavista Estate because the occupation government had made tender of payment in the amount of three million pesos, Japanese currency, which fact is believed sufficient to vest title of ownership in the Republic of the Philippines pursuant to decisions of the Supreme Court sustaining the validity of payments made in Japanese military notes during the occupation;

"WHEREAS, it is reported that the Philippine Government did not have to pay a single centavo for the Tambobong Estate as it was already practically owned by the Philippine Government by virtue of a deed of sale from the Philippine Trust Company dated September 3, 1947, for seven hundred and fifty thousand pesos, and by virtue of the rescission of the contract through which Ernest H. Burt had an interest in the estate; Now, therefore, be it

"RESOLVED, That a Special Committee, be, as it hereby is, created, composed of five members to be appointed by the President of the Senate to investigate the Buenavista and Tambobong Estate deals. It shall be the duty of the said Committee to determine whether the said purchase was honest, valid, and proper and whether the price involved in the deal was fair and just, the parties responsible therefor and any other facts the Committee may deem proper in the premises. Said Committee shall have the power to conduct public hearings;

issue subpoena or subpoena duces tecum to compel the attendance of witnesses or the production of documents before it; and may require any official or employee of any bureau, office, branch, subdivision, agency, or instrumentality of the Government to assist or otherwise cooperate with the Special Committee in the performance of its functions and duties. Said Committee shall submit its report of findings and recommendations within two weeks from the adoption of this Resolution."

The special committee created by the above resolution called and examined various witnesses, among the most important of whom was the herein petitioner, Jean L. Arnault. An intriguing question which the committee sought to resolve was that involved in the apparent unnecessariness and irregularity of the Government's paying to Burt the total sum of P1,500,000 for his alleged interest of only P20,000 in the two estates, which he seemed to have forfeited anyway long before October, 1949. The committee sought to determine who were responsible for and who benefited from the transaction at the expense of the Government.

Arnault testified that two checks payable to Burt aggregating P1,500,000 were delivered to him on the afternoon of October 29, 1949; that on the same date he opened a new account in the name of Ernest H. Burt with the Philippine National Bank in which he deposited the two checks aggregating P1,500,000; and that on the same occasion he drew on said account two checks; one for P500,000, which he transferred to the account of the Associated Agencies, Inc., with the Philippine National Bank, and another for P440,000 payable to cash, which he himself cashed. It was the desire of the committee to determine the ultimate recipient of this sum of P440,000 that gave rise to the present case.

At first the petitioner claimed before the Committee:

"Mr. ARNAULT (reading from a note). Mr. Chairman, for questions involving the disposition of funds, I take the position that the transactions were legal, that no laws were being violated, and that all requisites had been complied with. Here also I acted in a purely functional capacity of representative. I beg to be excused from making answer which might later be used against me. I have been assured that it is my constitutional right to refuse to incriminate myself, and I am certain that the Honorable Members of this Committee, who, I understand, are lawyers, will see the justness of my position."

At a subsequent session of the committee (March 16) Senator De Vera, a member of the committee, interrogated him as follows:

"Senator DE VERA. NOW these transactions, according to your own typewritten statement, were legal?

"Mr. ARNAULT. I believe so.

"Senator DE VERA. And the disposition of that fund involved, according to your own statement, did not violate any law?

"Mr. ARNAULT. I believe so.

* * * * *

"Senator DE VERA. SO that if the funds were disposed of in such a manner that no laws were violated, how is it that when you were asked by the Committee to tell what steps you took to have this money delivered to Burt, you refused to answer the questions, saying that it would incriminate you?

"Mr. ARNAULT. Because it violates the rights of a citizen to privacy in his dealings with other people.

* * * * *

"Senator DE VERA. Are you afraid to state how the money was disposed of because you would be incriminated, or you would be incriminating somebody?

"Mr. ARNAULT. I am not afraid; I simply stand on my privilege to dispose of the money that has been paid to me as a result of a legal transaction without having to account for any use of it."

But when in the same session the chairman of the committee, Senator Sumulong, interrogated the petitioner, the latter testified as follows:

"The CHAIRMAN. The other check of P440,000 which you also made on October 29, 1949, is payable to cash; and upon cashing this P440,000 on October 20, 1949, what did you do with that amount?

"Mr. ARNAULT. I turned it over to a certain person.

"The CHAIRMAN. The whole amount of P440,000?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. Who was that certain person to whom you delivered these P440,000 which you cashed on October 29, 1949?

"Mr. ARNAULT. I don't remember the name; he was a representative of Burt.

"The CHAIRMAN. That representative of Burt to whom you delivered the P440,000 was a Filipino?

"Mr. ARNAULT. I don't know.

"The CHAIRMAN. YOU do not remember the name of that representative of Burt to whom you delivered this big amount of P440,000?

"Mr. ARNAULT. I am not sure; I do not remember the name.

"The CHAIRMAN. That certain person who represented Burt to whom you delivered this big amount on October 29, 1949, gave you a receipt for the amount?

"Mr. ARNAULT. NO.

"The CHAIRMAN. Neither did you ask for a receipt?

"Mr. ARNAULT. I didn't ask.

"The CHAIRMAN. And why did you give that certain person, representative of Burt, this big amount of P440,000 which forms part of the P1-1/2 million paid to Burt?

"Mr. ARNAULT. Because I have instructions to that effect.

"The CHAIRMAN. "Who gave you the instruction?

"Mr. ARNAULT. Burt.

"The CHAIRMAN. Where is the instruction; was that in writing?

"Mr. ARNAULT. NO.

"The CHAIRMAN. By cable?

"Mr. ARNAULT. NO.

"The CHAIRMAN. In what form did you receive that instruction?

"Mr. ARNAULT. Verbal instruction.

"The CHAIRMAN. When did you receive this verbal instruction from Burt to deliver these P440,000 to a

certain person whose name you do not like to reveal?

"Mr. ARNAULT. I have instruction to comply with the request of that person.

"The CHAIRMAN. NOW, you said that instruction to you by Burt was verbal?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. When was that instruction given to you by Burt?

"Mr. ARNAULT. Long time ago.

"The CHAIRMAN. In what year did Burt give you that verbal instruction; when Burt was still here in the Philippines?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. But at that time Burt already knew that he would receive the money?

"Mr. ARNAULT. NO.

"The CHAIRMAN. In what year was that when Burt while he was here in the Philippines gave you the verbal instruction?

"Mr. ARNAULT. In 1946.

"The CHAIRMAN. And what has that certain person done for Burt to merit receiving these P440,000?

"Mr. ARNAULT. I absolutely do not know.

"The CHAIRMAN. You do not know?

"Mr. ARNAULT. I do not know.

"The CHAIRMAN. Burt did not tell you when he gave you the verbal instruction why that certain person should receive these P440,000?

"Mr. ARNAULT. He did not tell me.

"The CHAIRMAN. And Burt also authorized you to give this big amount to that certain person without receipt?

"Mr. ARNAULT. He told me that a certain person would represent him and where I could meet him.

"The CHAIRMAN. Did Burt know already that certain person as early as 1946?

"Mr. ARNAULT. I presume much before that.

"The CHAIRMAN. Did that certain person have any intervention in the prosecution of the two cases involving the Buenavista and Tambobong estates ?

"Mr. ARNAULT. Not that I know of.

"The CHAIRMAN. Did that certain person have anything to do with the negotiation for the settlement of the two cases?

"Mr. ARNAULT. Not that I know of.

"The CHAIRMAN. Is that certain person related to any high government official?

"Mr. ARNAULT. No, I do not know.

"The CHAIRMAN. Why can you not tell us the name of that certain person?

"Mr. ARNAULT. Because I am not sure of his name; I cannot remember the name.

"The CHAIRMAN. When you gave that certain person that P440,000 on October 29, 1949, you knew already that person?

"Mr. ARNAULT. Yes, I have seen him several times.

"The CHAIRMAN. And the name of that certain person is a Filipino name?

"Mr. ARNAULT. I would say Spanish name.

"The CHAIRMAN. And how about his Christian name; is it also a Spanish name?"

"Mr. ARNAULT. I am not sure; I think the initial is J.

"The CHAIRMAN. Did he have a middle name?

"Mr. ARNAULT. I never knew it.

"The CHAIRMAN. And how about his family name which according to your recollection is Spanish; can you remember the first letter with which that family name begins?

Mr. ARNAULT. S, D or F.

"The CHAIRMAN. And what was the last letter of the family name?

"Mr. ARNAULT. I do not know.

"The CHAIRMAN. Have you seen that person again after you have delivered this P440,000?

"Mr. ARNAULT. Yes, "The CHAIRMAN. Several times?

"Mr. ARNAULT. TWO or three times.

"The CHAIRMAN. When was the last time that you saw that certain person?

"Mr. ARNAULT. Sometime in December.

"The CHAIRMAN. Here in Manila?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. And in spite of the fact that you met that person two or three times, you never were able to find out what was his name?

"Mr. ARNAULT. If I knew, I would [have] taken it down. Mr. Peralta knows my name; of course, we have not done business. Lots of people in Manila know me, but they don't know my name, and I don't know them. They say I am 'chiflado' because I don't know their names.

"The CHAIRMAN. That certain person is a male or a female?

"Mr. ARNAULT. He is a male.

"The CHAIRMAN. YOU are sure that he is a male at least?

"Mr. ARNAULT. Yes.

"The CHAIRMAN. HOW old was he?

"Mr. ARNAULT. Let us say 38 to 40 years, more or less.

"The CHAIRMAN. Can you give us, more or less, a description of that certain person? What is his complexion: light, dark, or light brown?

"Mr. ARNAULT. He is like the gentleman there (pointing to Sen. Cabili), but smaller. He walks very straight, with military bearing.

"The CHAIRMAN. Do you know the residence of that certain person to whom you gave the P440,000?

"Mr. ARNAULT. No.

"The CHAIRMAN. During these frequent times that you met that certain person, you never came, to know his residence?

"Mr. ARNAULT. NO, because He was coming to the office.

"The CHAIRMAN. HOW tall is that certain person?

"Mr. ARNAULT. Between 5-2 and 5-6."

On May 15, 1950, the petitioner was haled before the bar of the Senate, which approved and read to him the following resolution:

"Be it resolved by the Senate of the Philippines in Session assembled:

"That Jean L. Arnault, now at the bar of the Senate, be arraigned for contempt consisting of contumacious acts committed by him during the investigation conducted by the Special Committee created by Senate Resolution No. 8 to probe the Tambobong and Buenavista estates deal of October 21, 1949, and that the President of the Senate propounded to him the following interrogatories:

"1. What excuse have you for persistently refusing to reveal the name of the person to whom you gave the P440,000 on October 29, 1949, a person whose name it is impossible for you not to remember not only because of the big amount of money you gave to him without receipt, but also because by your own statements you knew him as early as 1946 when General Ernest H. Burt was still in the Philippines, you made two other deliveries of money to him without receipt, and the last time you saw him was in December 1949?"

Thereupon petitioner's attorney, Mr. Orendain, submitted for him a written answer alleging that the questions were incriminatory in nature and begging leave to be allowed to stand on his constitutional right not to be compelled to be a witness against himself. Not satisfied with that written answer Senator Sumulong, over the objection of counsel for the petitioner, propounded to the latter the following question:

"Sen. SUMULONG. During the investigation, when the Committee asked you for the name of that person to whom you gave the P440,000, you said that you can [could] not remember his name. That was your reason then for refusing to reveal the name of the person. Now, in the answer that you have just cited, you are refusing to reveal the name of that person to whom you gave the P440,000 on the ground that your answer will be self-incriminating. Now, do I understand from you that you are abandoning your former claim that you cannot remember the name of that person, and that your reason now for your refusal to reveal the name of that person is that your answer might be self-incriminating? In other words, the question is this: What is your real reason for refusing to reveal the name of that person to whom you gave the P440,000: that you do not remember his name or that your answer would be self-incriminating?

* * * * *

"Mr. ORENDAIN. Mr. President, we are begging for the rules of procedure that the accused should not be

required to testify unless he so desires.

"The PRESIDENT. It is the duty of the respondent to answer the question. The question is very clear. It does not incriminate him.

* * * * *

"Mr. ARNAULT. I stand by every statement that I have made before the Senate Committee on the first, second, and third hearings to which I was made to testify. I stand by the statements that I have made in my letter to this Senate of May 2, 1950, in which I gave all the reasons that were in my powers to give, as requested. I cannot change anything in those statements that I made because they represent the best that I can do, to the best of my ability.

"The PRESIDENT. YOU are not answering the question. The answer has nothing to do with the question.

"Sen. SUMULONG. I would like to remind you, Mr. Arnault, that the reason that you gave during the investigation for not revealing the name of the person to whom you gave the P440,000 is not the same reason that you are now alleging because during the investigation you told us: 'I do not remember his name.' But, now, you are now saying: 'My answer might incriminate me.' What is your real position?

"Mr. ARNAULT. I have just stated that I stand by my statements that I made at the first, second, and third hearings. I said that I wanted to be excused from answering the question. I beg to be excused from making any answer that Might be incriminating in nature. However, in this answer, if the detail of not remembering the name of the person has not been included, it is an oversight.

"Sen. SUMULONG. Mr. Arnault, will you kindly answer a simple question: Do you remember or not the name of the person to whom you gave the P440,000?

"Mr. ARNAULT. I do not remember.

"Sen. SUMULONG. NOW, if you do not remember the name of that person, how can you say that your answer might be incriminating? If you do not remember his name, you cannot answer the question; so how could your answer be self-incriminating? What do you say to that?

"Mr. ARNAULT. This is too complicated for me to explain. Please, I do not see how to answer those, questions. That is why I asked for a lawyer, so he can help me. I have no means of knowing what the situation is about. I have been in jail 13 days without communication with the outside. How could I answer the question? I have no knowledge of legal procedure or rule, of which I am completely ignorant.

* * * * *

"Sen. SUMULONG. Mr. President, I ask that the question be answered.

"The PRESIDENT. The witness is ordered to answer the question. It is very clear. It does not incriminate the witness.

* * * * *

"Mr. ARNAULT. I do not remember. I stand on my constitutional rights. I beg to be excused from making further answer, please.

* * * * *

"Sen. SUMULONG. In that mimeographed letter that you sent addressed to the President of the Senate, dated May 2, 1950, you stated there that you cannot reveal the name of the person to whom you gave the P440,000 because if he is a public official you might render yourself liable for prosecution for bribery, and that if he is a private individual you might render yourself liable for prosecution for slander. Why did you make those statements when you cannot even tell us whether that person to whom you gave the P440,000 is a public official or a private individual? We are giving you this chance to convince the Senate that all these allegations

of yours that your answers might incriminate you are given by you honestly or you are just trying to make a pretext for not revealing the information desired by the Senate.

"The PRESIDENT. YOU are ordered to answer the question.

Mr. ARNAULT. I do not even understand the question.
(The question is restated and explained.)

"Mr. ARNAULT. That letter of May 2 was prepared by a lawyer for me and I signed it. That is all I can say how I stand about this letter. I have no knowledge myself enough to write such a letter, so I had to secure the help of a lawyer to help me in my period of distress."

In that same session of the Senate before which the petitioner was called to show cause why he should not be adjudged guilty of contempt of the Senate, Senator Sumulong propounded to the petitioner questions tending to elicit information from him as to the identity of the person to whom he delivered the P440,000; but the petitioner refused to reveal it by saying that he did not remember. The President of the Senate then propounded to him various questions concerning his past activities dating as far back as when witness was seven years of age and ending as recently as the postliberation period, all of which questions the witness answered satisfactorily. In view thereof, the President of the Senate also made an attempt to elicit the desired information from the witness, as follows:

"The PRESIDENT. NOW I am convinced that you have a good memory. Answer: Did you deliver the P440,000 as a gift, or for any consideration?

"Mr. ARNAULT. I have said that I had instructions to deliver it to that person, that is all.

"The PRESIDENT. Was it the first time you saw that person?

"Mr. ARNAULT. I saw him various times, I have already said.

"The PRESIDENT. In spite of that, you do not have the least remembrance of the name of that person?

"Mr. ARNAULT. I cannot remember. "The PRESIDENT. HOW is it that you do not remember events that happened a short time ago and, on the other hand, you remember events that occurred during your childhood?

"Mr. ARNAULT. I cannot explain."

The Senate then deliberated and adopted the resolution of May 15 hereinabove quoted whereby the petitioner was committed to the custody of the Sergeant-at-Arms and imprisoned until "he shall have purged the contempt by revealing to the Senate or to the aforesaid Special Committee the name of the person to whom he gave the P440,000, as well as answer other pertinent questions in connection therewith."

The Senate also adopted on the same date another resolution (No. 16), to wit:

"That the Special Committee created by Senate Resolution No. 8 be empowered and directed to continue its investigation of the Tambobong and Buenavista Estates deal of October 21, 1949, more particularly to continue its examination of Jean L. Arnault regarding the name of the person to whom he gave the P440,000 and other matters related therewith."

The first session of the Second Congress was adjourned at midnight on May 18, 1950.

The case was argued twice before us. We have given it earnest and prolonged consideration because it is the first of its kind to arise since the Constitution of the Republic of the Philippines was adopted. For the first time this Court is called upon to define the power of either House of Congress to punish a person not a member for contempt; and we are fully conscious that our pronouncements here will set an important precedent for the future

guidance of all concerned.

Before discussing the specific issues raised by the parties, we deem it necessary to lay down the general principles of law which form the background of those issues.

Patterned after the American system, our Constitution vests the powers of the Government in three independent but coordinate Departments—Legislative, Executive, and Judicial. The legislative power is vested in the Congress, which consists of the Senate and the House of Representatives. (Section 1, Article VI.) 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 (Section 10, Article VI.) The judicial power is vested in the Supreme Court and in such inferior courts as may be established by law. (Section 1, Article VIII.) Like the Constitution of the United States, ours does not contain an express provision empowering either of the two Houses of Congress to punish nonmembers for contempt. It may also be noted that whereas in the United States the legislative power is shared by and between the Congress of the United States, on the one hand, and the respective legislatures of the different States, on the other—the powers not delegated to the United States by the Constitution nor prohibited by it to States being reserved to the States, respectively, or to the people—in the Philippines, the legislative power is vested in the Congress of the Philippines alone. It may therefore be said that the Congress of the Philippines has a wider range of legislative field than the Congress of the United States or any State Legislature.

Our form of government being patterned after the American system—the framers of our Constitution having drawn largely from American institutions and practices—we can, in this case, properly draw also from American precedents in interpreting analogous provisions of our Constitution, as we have done in other cases in the past.

Although there is no provision in the Constitution expressly investing either House of Congress with power to make investigations and exact testimony to the end that it may exercise its legislative functions advisedly and effectively, such power is so far incidental to the legislative function as to be implied. In other words, the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which is not infrequently true—recourse must be had to others who do possess it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. (*McGrain vs. Daugherty*, 273 U.S., 135; 71 L. ed., 580; 50 A.L.R., 1.) The fact that the Constitution expressly gives to Congress the power to punish its Members for disorderly behaviour, does not by necessary implication exclude the power to punish for contempt any other person. (*Anderson vs. Dunn*, 6 Wheaton, 204; 5 L. ed., 242.)

But no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire. (*Kilbourn vs. Thompson*, 26 L. ed., 377.)

Since, as we have noted, the Congress of the Philippines has a wider range of legislative field than either the Congress of the United States or a State Legislature, we think it is correct to say that the field of inquiry into which it may enter is also wider. It would be difficult to define any limits by which the subject matter of its inquiry can be bounded. It is not necessary for us to do so in this case. Suffice it to say that it must be coextensive with the range of the legislative power.

In the present case the jurisdiction of the Senate, thru the Special Committee created by it, to investigate the Buenavista and Tambobong estates deal is not challenged by the petitioner; and we entertain no doubt as to the

Senate's authority to do so and as to the validity of Resolution No. 8 hereinabove quoted. The transaction involved a questionable and allegedly unnecessary and irregular expenditure of no less than P5,000,000 of public funds, of which Congress is the constitutional guardian. It also involved government agencies created by Congress and officers whose positions it is within the power of Congress to regulate or even abolish. As a result of the yet uncompleted investigation, the investigating committee has recommended and the Senate has approved three bills (1) prohibiting the Secretary of Justice or any other department head from discharging functions and exercising powers other than those attached to his own office, without previous congressional authorization; (2) prohibiting brothers and near relatives of any President of the Philippines from intervening directly or indirectly and in whatever capacity in transactions in which the Government is a party, more particularly where the decision lies in the hands of executive or administrative officers who are appointees of the President; and (3) providing that purchases of the Rural Progress Administration of big landed estates at a price of P100,000 or more, and loans guaranteed by the Government involving P100,000 or more, shall not become effective without previous congressional confirmation. [1]

We shall now consider and pass upon each of the questions raised by the petitioner in support of his contention that his commitment is unlawful.

First. He contends that the Senate has no power to punish him for contempt for refusing to reveal the name of the person to whom he gave the P440,000, because such information is immaterial to, and will not serve, any intended or purported legislation and his refusal to answer the question has not embarrassed, obstructed, or impeded the legislative process. It is argued that since the investigating committee has already rendered its report and has made all its recommendations as to what legislative measures should be taken pursuant to its findings, there is no necessity to force the petitioner to give the information desired other than that mentioned in its report, to wit: "In justice to Judge Quirino and to Secretary Nepomuceno, this atmosphere of suspicion that now pervades the public mind must be dissipated, and it can only be done if appropriate steps are taken by the Senate to compel Arnault to stop pretending that he cannot remember the name of the person to whom he gave the P440,000 and answer questions which will definitely establish the identity of that person * * *." Senator Sumulong, Chairman of the Committee, who appeared and argued the case for the respondents, denied that that was the only purpose of the Senate in seeking the information from the witness. He said that the investigation had not been completed, because, due to the contumacy of the witness, his committee had not yet determined the parties responsible for the anomalous transaction as required by Resolution No. 8; that, by Resolution No. 16, his committee was empowered and directed to continue its investigation, more particularly to continue its examination of the witness regarding the name of the person to whom he gave the P440,000 and other matters related therewith; that the bills recommended by his committee had not been approved by the House and might not be approved pending the completion of the investigation; and that those bills were not necessarily all the measures that Congress might deem it necessary to pass after the investigation is finished.

Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make, we think the investigating committee has the power to require a witness to answer any question pertinent to that inquiry, subject of course to his constitutional right against self-incrimination. The inquiry, to be within the jurisdiction of the legislative body to make, must be material or necessary to the exercise of a power in it vested by the Constitution, such as to legislate, or to expel a Member; and every question which the investigator is empowered to coerce a witness to answer must be material or pertinent to the subject of the inquiry or investigation. So a witness may not be coerced to answer a question that obviously has no relation to the subject of the inquiry. But from this it does not follow that every question that may be propounded to a witness must be material to any proposed or possible legislation. In other words, the materiality of the question must be determined by its direct relation to the subject of the inquiry and not by its indirect relation to any proposed or possible legislation. The

reason is, that the necessity or lack of necessity for legislative action and the form and character of the action itself are determined by the sum total of the information to be gathered as a result of the investigation, and not by a fraction of such information elicited from a single question.

In this connection, it is suggested by counsel for the respondents that the power of the Court is limited to determining whether the legislative body has jurisdiction to institute the inquiry or investigation; that once that jurisdiction is conceded, this Court cannot control the exercise of that jurisdiction or the use of Congressional discretion; and, it is insinuated, that the ruling of the Senate on the materiality of the question propounded to the witness is not subject to review by this Court under the principle of the separation of powers. We have to qualify this proposition. As was said by the Court of Appeals of New York: "We are bound to presume that the action of the legislative body was with a legitimate object if it is capable of being so construed, and we have no right to assume that the contrary was intended." (People ex rel. McDonald vs. Keeler, 99 N. Y., 463; 52 Am. Rep., 49; 2 N. E., 615, quoted with approval by the Supreme Court of the United States in McGrain vs. Daugherty, supra.) Applying this principle to the question at hand, we may concede that the ruling of the Senate on the materiality of the information sought from the witness is presumed to be correct. But, as noted by the Supreme Court of the United States in the said case of McGrain vs. Daugherty, it is a necessary deduction from the decision in Re Chapman, 41 L. ed., 1154, that where the questions are not pertinent to the matter under inquiry a witness rightfully may refuse to answer. So we are of the opinion that where the alleged immateriality of the information sought by the legislative body from a witness is relied upon to contest its jurisdiction, the court is in duty bound to pass upon the contention. The fact that the legislative body has jurisdiction or the power to make the inquiry would not preclude judicial intervention to correct a clear abuse of discretion in the exercise of that power.

Applying the criterion laid down in the last two preceding paragraphs to the resolution of the issue under consideration, we find that the question for the refusal to answer which the petitioner was held in contempt by the Senate is pertinent to the matter under inquiry. In fact, this is not and cannot be disputed. Senate Resolution No. 8, the validity of which is not challenged by the petitioner, requires the Special Committee, among other things, to determine the parties responsible for the Buenavista and Tambobong estates deal, and it is obvious that the name of the person to whom the witness gave the P440,000 involved in said deal is pertinent to that determination it is in fact the very thing sought to be determined. The contention is not that the question is impertinent to the subject of the inquiry but that it has no relation or materiality to any proposed legislation. We have already indicated that it is not necessary for the legislative body to show that every question propounded to a witness is material to any proposed or possible legislation; what is required is that it be pertinent to the matter under inquiry.

The Court cannot determine, any more than it can direct Congress, what legislation to approve or not to approve; that would be an invasion of the legislative prerogative. The Court, therefore, may not say that the information sought from the witness which is material to the subject of the legislative inquiry is immaterial to any proposed or possible legislation.

It is said that the Senate has already approved the three bills recommended by the Committee as a result of the uncompleted investigation and that there is no need for it to know the name of the person to whom the witness gave the P440,000. But aside from the fact that those bills have not yet been approved by the lower house and by the President and that they may be withdrawn or modified if after the inquiry is completed they should be found unnecessary or inadequate, there is nothing to prevent the Congress from approving other measures it may deem necessary after completing the investigation. We are not called upon, nor is it within our province, to determine or imagine what those measures may be. And our inability to do so is no reason for overruling the question propounded by the Senate to the witness.

The case of Re Chapman, 166 U. S., 661; 41 L. ed., 1154, is in point here. The inquiry there in question was

conducted under a resolution of the Senate and related to charges, published in the press, that senators were yielding to corrupt influences in considering a tariff bill then before the Senate and were speculating in stocks the value of which would be affected by pending amendments to the bill. Chapman, a member of a firm of stock brokers dealing in the stock of the American Sugar Refining Company, appeared before the committee in response to a subpoena and was asked, among others, the following questions:

"Had the firm, during the month of March, 1894, bought or sold any stock or securities, known as sugar stocks, for or in the interest, directly or indirectly, of any United States senator?"

"Was the said firm at that time carrying any sugar stock for the benefit of, or in the interest, directly or indirectly, of any United States senator?"

He refused to answer those questions and was prosecuted under an Act of Congress for contempt of the Senate. Upon being convicted and sent to jail he petitioned the Supreme Court of the United States for a writ of habeas corpus. One of the questions decided by the Supreme Court of the United States in that case was whether the committee had the right to compel the witness to answer said questions, and the Court held that the committee did have such right, saying:

"The questions were undoubtedly pertinent to the subject-matter of the inquiry. The resolution directed the committee to inquire 'whether any senator has been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate.' What the Senate might or might not do upon the facts when ascertained, we cannot say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument, but it is plain that negative answers would have cleared that body of what the Senate regarded as offensive imputations, while affirmative answers might have led to further action on the part of the Senate within its constitutional powers." (*Italics ours.*)

It may be contended that the determination of the parties responsible for the deal is incumbent upon the judicial rather than upon the legislative branch. But we think there is no basis in fact or in law for such assumption. The petitioner has not challenged the validity of Senate Resolution No. 8, and that resolution expressly requires the committee to determine the parties responsible for the deal. We are bound to presume that the Senate has acted in the due performance of its constitutional function in instituting the inquiry, if the act is capable of being so construed. On the other hand, there is no suggestion that the judiciary has instituted an inquiry to determine the parties responsible for the deal. Under the circumstances of the case, it appearing that the questioned transaction was affected by the head of the Department of Justice himself, it is not reasonable to expect that the Fiscal or the Court of First Instance of Manila will take the initiative to investigate and prosecute the parties responsible for the deal until and unless the Senate shall have determined who those parties are and shall have taken such measures as may be within its competence to take to redress the wrong that may have been committed against the people as a result of the transaction. As we have said, the transaction involved no less than P5,000,000 of public funds. That certainly is a matter of public concern which it is the duty of the constitutional guardian of the treasury to investigate.

If the subject of investigation before the committee is within the range of legitimate legislative inquiry and the proposed testimony of the witness called relates to that subject, obedience to its process may be enforced by the committee by imprisonment. (*Sullivan vs. Hill*, 73 W. Va., 49; 79 S. E., 670; 40 Ann. Cas. [1916 B.], 1115.)

The decision in the case of *Kilbourn vs. Thompson*, 26 L. ed., 377, relied upon by the petitioner, is not applicable here. In that case the inquiry instituted by the House of Representatives of the United States related to a private real-estate pool or partnership in the District of Columbia. Jay Cook & Company had had an interest in the pool but had become bankrupts, and their estate was in course of administration in a federal bankruptcy court in Pennsylvania. The United States was one of their creditors. The trustee in the bankruptcy proceeding had effected

a settlement of the bankrupts' interest in the pool, and of course his action was subject to examination and approval or disapproval by the bankruptcy court. Some of the creditors, including the United States, were dissatisfied with the settlement. The resolution of the House directed the Committee "to inquire into the nature and history of said real-estate pool and the character of said settlement, with the amount of property involved, in which Jay Cooke & Co. were interested, and the amount paid or to be paid in said settlement, with power to send for persons and papers, and report to this House." The Supreme Court of the United States, speaking thru Mr. Justice Miller, pointed out that the resolution contained no suggestion of contemplated legislation; that the matter was one in respect of which no valid legislation could be had; that the bankrupts' estate and the trustee's settlement were still pending in the bankruptcy court; and that the United State's and other creditors were free to press their claims in that proceeding. And on these grounds the court held that in undertaking the investigation "the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because the power was in its nature clearly judicial." The principles announced and applied in that case are: that neither House of Congress possesses a "general power of making inquiry into the private affairs of the citizen"; that the power actually possessed is limited to inquiries relating to matters of which the particular House has jurisdiction, and in respect of which it rightfully may take other action; that if the inquiry relates to a matter wherein relief or redress could be had only by judicial proceeding, it is not within the range of this power, but must be left to the courts, conformably to the constitutional separation of governmental powers.

That case differs from the present case in two important respects: (1) There the court found that the subject of the inquiry, which related to a private real-estate pool or partnership, was not within the jurisdiction of either House of Congress; while here it is not disputed that the subject of the inquiry, which relates to a transaction involving a questionable expenditure by the Government of P5,000,000 of public funds, is within the jurisdiction of the Senate. (2) There the claim of the Government as a creditor of Jay Cooke & Company, which had had an interest in the pool, was pending adjudication by the court; while here the interposition of the judicial power on the subject of the inquiry cannot be expected, as we have pointed out above, until after the Senate shall have determined who the parties responsible are and shall have taken such measures as may be within its competence to take to redress the wrong that may have been committed against the people as a result of the transaction.

It is interesting to note that the decision in the case of *Kilbourn vs. Thompson* has evoked strong criticisms from legal scholars. (See Potts, *Power of Legislative Bodies to Punish for Contempt* [1926], 74 U. Pa. L. Rev., 692-699; James M. Landis, *Constitutional Limitations on the Congressional Power of Investigation* [1926], 40 Harvard L. Rev., 153, 214-220.) We quote the following from Professor Landis' criticism: "Mr. Justice Miller saw the case purely as an attempt by the House to secure to the Government certain priority rights as creditor of the bankrupt concern. To him it assumed the character of a lawsuit between the Government and Jay Cooke & Co., with the Government, acting through the House, attempting to override the orderliness of established procedure and thereby prefer a creditors' bill not before the courts but before Congress. That bankruptcy proceedings had already been instituted against Jay Cooke & Co. in a federal court gave added impetus to such a conception. The House was seeking to oust a court of prior acquired jurisdiction by an extraordinary and unwarranted assumption of 'judicial power'! The broader aspect of the investigation had not been disclosed to the Court. That Jay Cooke & Co.'s indebtedness and the particular funds in question were only part of the great administrative problem connected with the use and disposition of public monies, that the particular failure was of consequence mainly in relation to the security demanded for all government deposits, that the facts connected with one such default revealed the possibility of other and greater maladministration, such considerations had not been put before the Court. Nor had it been acquainted with the every-day nature of the particular investigation and the powers there exerted by the House, powers whose exercise was customary and familiar in legislative practice. Instead of

assuming the character of an extraordinary judicial proceeding, the inquiry, placed in its proper background, should have been regarded as a normal and customary part of the legislative process. Detailed definiteness of legislative purpose was thus made the demand of the Court in *Kilbourn vs. Thompson*. But investigators cannot foretell the results that may be achieved. The power of Congress to exercise control over a real-estate pool is not a matter for abstract speculation but one to be determined only after an exhaustive examination of the problem. Relationship, and not their possibilities, determine the extent of congressional power. Constitutionality depends upon such disclosures. Their presence, whether determinative of legislative or judicial power, cannot be relegated to guesswork. Neither Congress nor the Court can predict, prior to the event, the result of investigation."

The other case relied upon by the petitioner is *Marshall vs. Gordon*, 243 U.S., 521; 61 L. ed., 881. The question there was whether the House of Representatives exceeded its power in punishing, as for contempt of its authority, the District Attorney of the Southern District of New York, who had written, published, and sent to the chairman of one of its committees an ill-tempered and irritating letter respecting the action and purposes of the committee in interfering with the investigation by the grand jury of alleged illegal activities of a member of the House of Representatives. Power to make inquiries and obtain evidence by compulsory process was not involved. The court recognized distinctly that the House of Representatives had implied power to punish a person not a member for contempt, but held that its action in this instance was without constitutional justification. The decision was put on the ground that the letter, while offensive and vexatious, was not calculated or likely to affect the House in any of its proceedings or in the exercise of any of its functions. This brief statement of the facts and the issues decided in that case is sufficient to show the inapplicability thereof to the present case. There the contempt involved consisted in the district attorney's writing to the chairman of the committee an offensive and vexatious letter, while here the contempt involved consists in the refusal of the witness to answer questions pertinent to the subject of an inquiry which the Senate has the power and jurisdiction to make. But in that case it was recognized that the House of Representatives has implied power to punish a person not a member for contempt. In that respect the case is applicable here in favor of the Senate's (and not of the petitioner's) contention.

Second. It is next contended for the petitioner that the Senate lacks authority to commit him for contempt for a term beyond its period of legislative session, which ended on May 18, 1950. This contention is based on the opinion of Mr. Justice Malcolm, concurred in by Justices Street and Villa-Real, in the case of *Lopez vs. De los Reyes* (1930), 55 Phil., 170. In that case it appears that on October 23, 1929, Candido Lopez assaulted a member of the House of Representatives while the latter was going to the hall of the House of Representatives to attend the session which was then about to begin, as a result of which assault said representative was unable to attend the sessions on that day and those of the two days next following by reason of the threats which Candido Lopez made against him. By resolution of the House adopted November 6, 1929, Lopez was declared guilty of contempt of the House of Representatives and ordered punished by confinement in Bilibid Prison for a period of twenty-four hours. That resolution was not complied with because the session of the House of Representatives adjourned at midnight on November 8, 1929, and was reiterated at the next session on September 16, 1930. Lopez was subsequently arrested, whereupon he applied for the writ of habeas corpus in the Court of First Instance of Manila, which denied the application. Upon appeal to the Supreme Court, six justices voted to grant the writ: Justices Malcolm, Street, and Villa-Real, on the ground that the term of imprisonment meted out to the petitioner could not legally be extended beyond the session of the body in which the contempt occurred; and Justices Johns, Villamor, and Ostrand, on the ground that the Philippine Legislature had no power to punish for contempt because it was a creature merely of an Act of the Congress of the United States and not of a Constitution adopted by the people. Chief Justice Avanceña, Justice Johnson, and Justice Romualdez wrote separate opinions, concurring with Justices Malcolm, Street, and Villa-Real, that the Legislature had inherent power to punish for contempt but dissenting from the opinion that the order of commitment could only be executed during the particular session in

which the act of contempt was committed.

Thus, on the question under consideration, the Court was equally divided and no decisive pronouncement was made. The opinion of Mr. Justice Malcolm is based mainly on the following passage in the case of *Anderson vs. Dunn*, *supra*:

"And although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment."

as well as on the following quotation from *Marshall vs. Gordon*, *supra*:

"And the essential nature of the power also makes clear the cogency and application of the two limitations which were expressly pointed out in *Anderson vs. Dunn*, *supra*, that is, that the power even when applied to subjects which justified its exercise is limited to imprisonment and such imprisonment may not be extended beyond the session of the body in which the contempt occurred."

Interpreting the above quotations, Chief Justice Avanceña held:

"From this doctrine it follows, in my judgment, that the imposition of the penalty is limited to the existence of the legislative body, which ceases to function upon its final periodical dissolution. The doctrine refers to its existence and not to any particular session thereof. This must be so, inasmuch as the basis of the power to impose such penalty is the right which the Legislature has to self-preservation, and which right is enforceable during the existence of the legislative body. Many causes might be conceived to constitute contempt to the Legislature, which would continue to be a menace to its preservation during the existence of the legislative body against which contempt was committed.

"If the basis of the power of the legislature to punish for contempt exists while the legislative body exercising it is in session, then that power and the exercise thereof must perforce continue until its final adjournment and the election of its successor."

Mr. Justice Johnson's more elaborate opinion, supported by quotations from Cooley's *Constitutional Limitations* and from Jefferson's *Manual*, is to the same effect. Mr. Justice Romualdez said: "In my opinion, where, as in the case before us, the members composing the legislative body against which the contempt was committed have not yet completed their three-year term, the House may take action against the petitioner herein."

We note that the quotations from *Anderson vs. Dunn* and *Marshall vs. Gordon* relied upon by Justice Malcolm are obiter dicta. *Anderson vs. Dunn* was an action of trespass against the Sergeant-at-Arms of the House of Representatives of the United States for assault and battery and false imprisonment. The plaintiff had been arrested for contempt of the House, brought before the bar of the House, and reprimanded by the Speaker, and then discharged from custody. The question as to the duration of the penalty was not involved in that case. The question there presented was "whether the House of Representatives can take cognizance of contempts committed against themselves, under any circumstances." The court there held that the House of Representatives had the power to punish for contempt, and affirmed the judgment of the lower court in favor of the defendant. In *Marshall vs. Gordon*, the question presented was whether the House had the power under the Constitution to deal with the conduct of the district attorney in writing a vexatious letter as a contempt of its authority, and to inflict punishment upon the writer for such contempt as a matter of legislative power. The court held that the House had no such power because the writing of the letter did not obstruct the performance of legislative duty and did not endanger the preservation of the power of the House to carry out its legislative authority. Upon that ground alone, and not because the House had adjourned, the court ordered the discharge of the petitioner from custody. The case where the question was squarely decided is *McGrain vs. Daugherty*, *supra*. There it appears that the Senate had adopted a resolution authorizing and directing a select committee of five senators to investigate various charges of

misfeasance and nonfeasance in the Department of Justice after Attorney General Harry M. Daugherty became its supervising head. In the course of the investigation the committee caused to: be served on Mally S. Daugherty, brother of Harry M. Daugherty and president of the Midland National Bank of Washington Court House, Ohio, a subpoena commanding him to appear before it for the purpose of giving testimony relating to the subject under consideration. The witness failed to appear without offering any excuse for his failure. The committee reported the matter to the Senate and the latter adopted a resolution, "That the President of the Senate pro tempore issue his warrant commanding the Sergeant-at-Arms or his deputy to take into custody the body of the said M. S. Daugherty wherever found, and to bring the Said M.S. Daugherty before the bar of the Senate, then and there to answer such questions pertinent to the matter under inquiry as the Senate may order the President of the Senate pro tempore to propound; and to keep the said M. S. Daugherty in custody to await the further order of the Senate." Upon being arrested, the witness petitioned the federal court in Cincinnati for a writ of habeas corpus. The federal court granted the writ and discharged the witness on the ground that the Senate, in directing the investigation and in ordering the arrest, exceeded its power under the Constitution. Upon appeal to the Supreme Court of the United States, one of the contentions of the witness was that the case had become moot because the investigation was ordered and the committee was appointed during the Sixty-eighth Congress, which expired on March 4, 1926. In overruling the contention, the court said:

"* * * The resolution ordering the investigation in terms limited the committee's authority to the period of the Sixty-eight Congress; but this apparently was changed by a later and amendatory resolution authorizing the committee to sit at such times and places as it might deem advisable or necessary. It is said in Jefferson's Manual: 'Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose.' But the context shows that the reference is to the two houses of Parliament when adjourned by prorogation or dissolution by the King. The rule may be the same with the House of Representatives whose members are all elected for the period of a single Congress; but it cannot well be the same with the Senate, which is a continuing body 'whose members are all elected for a term of six years and so divided into classes that the seats of one third only become vacant at the end of each Congress, two thirds always continuing into the next Congress, save as vacancies may occur through death or resignation.

"Mr. Hinds in his collection of precedents, says: 'The Senate, as a continuing body, may continue its committees through the recess following the expiration of a Congress;' and, after quoting the above statement from Jefferson's Manual, he says: 'The Senate, however, being a continuing body, gives authority to its committees during the recess after the expiration of a Congress.' So far as we are advised the select committee having this investigation in charge has neither made a final report nor been discharged; nor has it been continued by an affirmative order. Apparently its activities have been suspended pending the decision of" this case. But, be this as it may, it is certain that the committee may be continued or revived now by motion to that effect, and, if continued or revived, will have all its original powers. This being so, and the Senate being a continuing body, the case cannot be said to have become moot in the ordinary sense. The situation is measurably like that in *Southern P. Terminal Co. vs. Interstate Commerce Commission*, 219 U.S., 498, 514-516; 55 L. ed., 310, 315, 316; 31 Sup. Ct. Rep., 279, where it was held that a suit to enjoin the enforcement of an order of the Interstate Commerce Commission did not become moot through the expiration of the order where it was capable of repetition by the Commission and was a matter of public interest. Our judgment may yet be carried into effect and the investigation proceeded with from the point at which it apparently was interrupted by reason of the habeas corpus proceedings. In these circumstances we think a judgment should be rendered as was done in the case cited.

"What has been said requires that the final order in the District Court discharging the witness from custody be reversed."

Like the Senate of the United States, the Senate of the Philippines is a continuing body whose members are

elected for a term of six years and so divided that the seats of only one-third become vacant every two years, two-thirds always continuing into the next Congress save as vacancies may occur thru death or resignation. Members of the House of Representatives are all elected for a term of four years; so that the term of every Congress is four years. The Second Congress of the Philippines was constituted on December 30, 1949, and will expire on December 30, 1953. The resolution of the Senate committing the petitioner was adopted during the first session of the Second Congress, which began on the fourth Monday of January and ended on May 18, 1950.

Had said resolution of commitment been adopted by the House of Representatives, we think it could be enforced until the final adjournment of the last session of the Second Congress in 1953. We find no sound reason to limit the power of a legislative body to punish for contempt to the end of every session and not to the end of the last session terminating the existence of that body. The very reason for the exercise of the power to punish for contempt is to enable the legislative body to perform its constitutional function without impediment or obstruction. Legislative functions may be and in practice are performed during recess by duly constituted committees charged with the duty of performing investigations or conducting hearing relative to any proposed legislation. To deny to such committees the power of inquiry with process to enforce it would be to defeat the very purpose for which that power is recognized in the legislative body as an essential and appropriate auxiliary to its legislative function. It is but logical to say that the power of self-preservation is coexistent with the life to be preserved.

But the resolution of commitment here in question was adopted by the Senate, which is a continuing body and which does not cease to exist upon the periodical dissolution of the Congress or of the House of Representatives. There is no limit as to time to the Senate's power to punish for contempt in cases where that power may constitutionally be exerted as in the present case.

Mere reflection upon the situation at hand convinces us of the soundness of this proposition. The Senate has ordered an investigation of the Buenavista and Tambobong estates deal, which we have found it is within its competence to make. That investigation has not been completed because of the refusal of the petitioner as a witness to answer certain questions pertinent to the subject of the inquiry. The Senate has empowered the committee to continue the investigation during the recess. By refusing to answer the questions, the witness has obstructed the performance by the Senate of its legislative function, and the Senate has the power to remove the obstruction by compelling the witness to answer the questions thru restraint of his liberty until he shall have answered them. That power subsists as long as the Senate, which is a continuing body, persists in performing the particular legislative function involved. To hold that it may punish the witness for contempt only during the session in which investigation was begun, would be to recognize the right of the Senate to perform its function but at the same time to deny to it an essential and appropriate means for its performance. Aside from this, if we should hold that the power to punish for contempt terminates upon the adjournment of the session, the Senate would have to resume the investigation at the next and succeeding sessions and repeat the contempt proceedings against the witness until the investigation is completed—an absurd, unnecessary, and vexatious procedure, which should be avoided.

As against the foregoing conclusion it is argued for the petitioner that the power may be abusively and oppressively exerted by the Senate which might keep the witness in prison for life. But we must assume that the Senate will not be disposed to exert the power beyond its proper bounds. And if, contrary to this assumption, proper limitations are disregarded, the portals of this Court are always open to those whose rights might thus be transgressed.

Third. Lastly, the petitioner invokes the privilege against self-incrimination. He contends that he would incriminate himself if he should reveal the name of the person to whom he gave the P440,000 because if that

person be a public official he (witness) might be accused of bribery, and if that person be a private individual the latter might accuse him of oral defamation.

The ground upon which the witness' claim is based is too shaky, infirm, and slippery to afford him safety. At first he told the Committee that the transactions were legal, that no laws were violated, and that all requisites had been complied with; but at the same time he begged to be excused from making answers "which might later be used against me." A little later he explained that although the transactions were legal he refused to answer questions concerning them "because it violates the rights of a citizen to privacy in his dealings with other people. * * *. I simply stand on my privilege to dispose of the money that has been paid to me as a result of a legal transaction without having to account for any use of it." But after being apparently convinced by the Committee that his position was untenable, the witness testified that, without securing any receipt, he turned over the P440,000 to a certain person, a representative of Burt, in compliance with Burt's verbal instruction made in 1946; that, as far as he know, that certain person had nothing to do with the negotiations for the settlement of the Buenavista and Tambobong cases; that he had seen that person several times before he gave him the P440,000 on October 29, 1949, and that since then he had seen him again two or three times, the last time being in December, 1949, in Manila; that the person was a male, 39 to 40 years of age, between 5 feet, 2 inches and 5 feet, 6 inches in height. But the witness would not reveal the name of that person on these pretexts: "I don't remember the name; he was a representative of Burt." "I am not sure; I don't remember the name."

We are satisfied that those answers of the witness to the important question, What is the name of that person to whom you gave the P440,000? were obviously false. His insistent claim before the bar of the Senate that if he should reveal the name he would incriminate himself, necessarily implied that he knew the name. Moreover, it is unbelievable that he gave P440,000 to a person to him unknown.

"Testimony which is obviously false or evasive is equivalent to a refusal to testify and is punishable as contempt, assuming that a refusal to testify would be so punishable." (12 Am. Jur., sec. 15, Contempt, pp. 399-400.) In the case of *Mason vs. U. S.*, 61 L. ed., 1198, it appears that Mason was called to testify before a grand jury engaged in investigating a charge of gambling against six other men. After stating that he was sitting at a table with said men when they were arrested, he refused to answer two questions, claiming so to do might tend to incriminate him: (1) "Was there a game of cards being played on this particular evening at the table at which you were sitting?" (2) "Was there a game of cards being played at another table at this time?" The foreman of the grand jury reported the matter to the judge, who ruled "that each and all of said questions are proper and that the answers thereto would not tend to incriminate the witnesses." Mason was again called and he refused to answer the first question propounded to him, but, half yielding to frustration, he said in response to the second question: "I don't know." In affirming the conviction for contempt, the Supreme Court of the United States among other things said:

"In the present case the witnesses certainly were not relieved from answering merely because they" declared that so to do might incriminate them. The wisdom of the rule in this regard is well illustrated by the enforced answer, 'I don't know,' given by Mason to the second question, after he had refused to reply under a claim of constitutional privilege."

Since according to the witness himself the transaction was legal, and that he gave, the P440,000 to a representative of Burt in compliance with the latter's verbal instruction, we find no basis upon which to sustain his claim that to reveal the name of that person might incriminate him. There is no conflicts of authorities on the applicable rule, to wit:

"Generally, the question whether testimony is privileged is for the determination of the Court. At least, it is not enough for the witness to say that the answer will incriminate him, as he is not the sole judge of his liability. The danger of self-incrimination must appear reasonable and real to the court, from all the circumstances, and

from the whole case, as well as from his general conception of the relations of the witness. Upon the facts thus developed, it is the province of the court to determine whether a direct answer to a question may criminate or not. * * * The fact that the testimony of a witness may tend to show that he has violated the law is not sufficient to entitle him to claim the protection of the constitutional provision against self-incrimination, unless he is at the same time liable to prosecution and punishment for such violation. The witness cannot assert his privilege by reason of some fanciful excuse, for protection against an imaginary danger, or to secure immunity to a third person." (3 Wharton's Criminal Evidence, 11th ed., sees. 1135, 1136.)

"It is the province of the trial judge to determine from all the facts and circumstances of the case whether the witness is justified in refusing to answer. (People vs. Gonzo, 23 N. E. [2d], 210 [111. App., 1939].) A witness is not relieved from answering merely on his own declaration that an answer might incriminate him, but rather it is for the trial judge to decide that question." (Mason vs. U. S., 244 U. S., 362; 61 L. ed., 1193, 1200.)

As against witness's inconsistent and unjustified claim to a constitutional right, is his clear duty as a citizen to give frank, sincere, and truthful testimony before a competent authority. The state has the right to exact fulfilment of a citizen's obligation, consistent of course with his right under the Constitution. The witness in this case has been vociferous and militant in claiming constitutional rights and privileges but patently recreant to his duties and obligations to the Government which protects those rights under the law. When a specific right and a specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must give way to the latter. The right to life is one of the most sacred that the citizen may claim, and yet the state may deprive him of it if he violates his corresponding obligation to respect the life of others. As Mr. Justice Johnson said in *Anderson vs. Dunn*: "The wretch beneath the gallows may repine at the fate which awaits him, and yet it is not less certain that the laws under which he suffers were made for the security." Paraphrasing and applying that pronouncement here, the petitioner may not relish the restraint of his liberty pending the fulfilment by him of his duty, but it is no less certain that the laws under which his liberty is restrained were made for his welfare.

From all the foregoing, it follows that the petition must be denied, and it is so ordered, with costs.

Paras, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

[1] The appeal was withdrawn on November 9, 1949.

[1] These bills, however, have not yet been acted upon by the House of Representatives.

TUASON, J., dissenting:

The estates deal which gave rise to petitioner's examination by a committee of the Senate was one that aroused popular indignation as few cases of graft and corruption have. The investigation was greeted with spontaneous outburst of applause by an outraged citizenry, and the Senate was rightly commended for making the lead in getting at the bottom of an infamous transaction.

All the more necessary it is that we should approach the consideration of this case with circumspection, lest the influence of strong public passions should get the better of our judgment. It is trite to say that public sentiment fades into insignificance before a proper observance of constitutional processes, the maintenance of the constitutional structure, and the protection of individual rights. Only thus can a government of laws, the foundation stone of human liberty, be strengthened and made secure for that very public.

It is with these thoughts in mind that, with sincere regret, I am constrained to dissent.

The power of legislative bodies under the American system of government to punish for contempt was at the beginning totally denied by some courts and students of constitutional law, on the ground that this power is judicial in nature and belongs to the judiciary branch of the government under the constitutional scheme. The point however is now settled in favor of the existence of the power. This rule is based on the necessity for the attainment of the ends for which legislative body is created. Nor can the legitimacy of the purpose of the investigation which the Senate ordered in this case be disputed. As a corollary, it was likewise legitimate and necessary for the committee to summon the petitioner with a command to produce his books and documents, and to commit him to prison for his refusal or failure to obey the subpoena. And, finally, there is no question that the arresting officers were fully justified in using necessary bodily force to bring him before the bar of the Senate when he feigned illness and stalled for time in the mistaken belief that after the closing of the then current session of Congress he could go scot-free.

At the same time, there is also universal agreement that the power is not absolute. The disagreement lies in the extent of the power, and such disagreement is to be found even between decisions of the same court. *Anderson vs. Dunn*, 6 Wheat., No. 204, may be said to have taken the most liberal view of the legislature's authority, and *Kilbourn vs. Thompson*, 103 U.S. 168, which partly overruled and qualified the former, the strictest. By the most liberal standard the power is restricted "by considerations as to the nature of the inquiry, occasion, or action in connection with which the contemptuous conduct has occurred." Punishment must be resorted to for the efficient exercise of the legislative function. Even *Anderson vs. Dunn* speaks of the power as "the least possible power adequate to the end proposed."

Judged by any test, the question propounded to the witness does not, in my opinion, meet the constitutional requirement. It is obvious, I think, that the query has nothing to do with any matter within the cognizance of the Congress. There is, on the contrary, positive suggestion that the question has no relation to the contemplated legislation. The statement of the committee in its report that the information sought to be obtained would clear the names of the persons suspected of having received the money, is, on the surface, the most or only plausible reason that can be advanced. Assuming this to be the motive behind the question, yet little reflection will show that the same is beyond the scope of legislative authority and prerogatives. It is outside the concern of the Congress to protect the honor of particular citizens except that of its own members' as a means of preserving respect and confidence in that body. Moreover, the purported good intention must assume, if it is to materialize, that the persons under suspicion are really innocent; for if they are not and the witness will tell the truth, the result will be to augment their disgrace rather than vindicate their honor. This is all the more likely to happen because one of those persons, is judged from the committee's findings, the most likely one, to say the least, who got the money.

If the process of deduction is pressed further, the reasonable conclusion seems to be that the object of the question is, to mention only one, to prepare the way for a court action. The majority decision indirectly admits or insinuates this to be the case. It says, "It appearing that the questioned transaction was effected by the head of the Department of Justice himself, it is not reasonable to expect the fiscal or the Court of First Instance of Manila will take the initiative to investigate and prosecute the parties responsible for the deal until and unless the Senate shall have determined who those parties are and shall have taken such measures as may be within its competence to take, to redress the wrong" that may have been committed against the people as a result of the transaction." So here is an admission, implied if not express, that the Senate wants the witness to give names because the fiscal or the courts will not initiate an action against parties who should be prosecuted. It is needless to say that the institution of a criminal or civil suit is a matter that devolves upon other departments of the government, alien to the duties of the Congress to look after.

The Congress is at full liberty, of course, to make any investigation for the purpose of aiding the fiscal or the

courts, and ask any question which a witness may please to answer, but this liberty does not carry with it the authority to imprison persons who refuse to testify.

In the intricacy and complexity of an investigation it is often impossible to foretell before its close what relation certain facts may bear on the final results, and experience has shown that investigators and courts would do well to veer on the liberal side in the resolution of doubtful questions. But the Senate is not now in the midst of an inquiry with the situation still in a fluid or tentative state. Now the facts are no longer confused. The committee has finished its investigation and submitted its final report and the Senate has approved a bill on the bases of the facts found. All the pertinent facts having been gathered, as is to be inferred from that report and the nature of the Senate's action, every question, every fact, every bit of testimony has taken a distinct meaning susceptible of concrete and definite evaluation; the task has been reduced to the simple process of sifting the grain from the chaffs.

In the light of the committee's report and of the bill introduced and approved in the Senate, it seems quite plain that the express naming of the recipient or recipients of the money is entirely unessential to anything the Senate has a right or duty to do in the premises. Names may be necessary for the purpose of criminal prosecution, impeachment or civil suit. In such proceedings, identities are essential. In some legislative investigations it is important to know the names of public officials involved. But the particular disclosure sought of the petitioner here is immaterial to the proposed law. It is enough for the Senate, for its own legitimate object, to learn how the Department of Justice was being run, to know the part the Secretary of Justice had in the purchase, and to have a moral conviction as to the identity of the person who benefited thereby. The need for such legislation as was envisaged in the resolution and translated into the bill approved by the Senate is met by an insight into a broad outline of the deal. To paraphrase the U. S. Supreme Court in *Anderson vs. Dunn*, although the passage was used in another connection, legislation is a science of experiment and the relation between the legislator and the end does not have to be so direct as to strike the eye of the former.

One of the proposed laws prohibits brothers and near relatives of any president of the Philippines from intervening directly or indirectly in transactions in which the Government is a party. It is stated that this is subject to change depending on the answer Arnault may give. This statement is wide open to challenge.

If Arnault should name Antonio Quirino it must be admitted that the bill would not be altered. But let us suppose that the witness will point to another man. Will the result be any different? Will the Senate recall the bill? I can not perceive the slightest possibility of such eventuality. The pending bill was framed on the assumption that Antonio Quirino was a party to the deal in question. As has been said, the committee entertains a moral conviction that this brother of the President was the recipient of a share of the proceeds of sale. No amount of assurance by Arnault to the contrary would be believed by the committee in the face of his absolute unreliability for truth. And, I repeat, the proposed legislation does not need for its justification legal evidence of Antonio Quirino's intervention in the transaction.

All this in the first place. In the second place, it is not to be assumed that the present bill is aimed solely against Antonio Quirino whose relation to the Administration is but temporary. It is more reasonable to presume that the proposed enactment is intended for all time and for all brothers of future presidents, for in reality it is no more than an extension or enlargement of laws already found in the statute book which guard against temptations to exploit official positions or influence to the prejudice of public interests.

The disputed question is, in fact, not only irrelevant but moot. This is decisive of the irrelevancy of this question. As has been noticed, the committee has submitted its final report and recommendation, and a bill has been approved by the Senate calculated to prevent recurrence of the anomalies exposed. For the purpose for which it

was instituted the inquiry is over and the committee's mission accomplished.

It is true that the committee continues to sit during the recess of Congress, but it is obvious from all the circumstances that the sole and real object of the extension of the committee's sittings is to receive the witness' answer in the event he capitulates. I am unable to see any new phase of the deal which the Senate could legitimately wish to know, and the respondents and this Court have not pointed out any. That the committee has not sat and nothing has been done so far except to wait for Arnault's answer is a convincing manifestation of the above conclusion.

The order "to continue its investigation" contained in Senate Resolution No. 16 cannot disguise the realities revealed by the Senate's actions already referred to and by the emphasis given to the instruction "to continue its (committee's) examination of Jean L. Arnault regarding the name of the person to whom he gave the P440,000." The instruction 'to continue the investigation' is not entitled to the blind presumption that it embraces matters other than the revelation by the witness of the name of the person who got the money. Jurisdiction to deprive a citizen of liberty outside the usual process is not acquired by innuendos or vague assertions of the facts on which jurisdiction is made to depend. If the judgment of a court of law of limited jurisdiction does not enjoy the presumption of legality, much less can the presumption of regularity be invoked for a resolution of a deliberative body whose power to inflict punishment upon private citizens is wholly derived by implication and vehemently contested by some judges. At any rate, "the stronger presumption of innocence attends accused at the trial", and "it is incumbent" upon the respondents "to show that the question pertains to some matter under investigation." (Sinclair vs. U.S., 73 L. ed., 693.) This rule stems from the fact that the power is in derogation of the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law, which presupposes "a trial in which the rights of the parties shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established." Powers so dangerous to the liberty of a citizen can not be allowed except where the pertinency is clear. A Judge who abuses such power may be impeached and he acts at all times under the sense of this accountability and responsibility. His victims may be reached by the pardoning power. But if the Congress be allowed this unbounded jurisdiction of discretion, there is no redress. The Congress may dispoil of a citizen's life, liberty or property and there is no power on earth to stop its hand. There is, there can be, no such unlimited power in any department of the government of the Republic. (Loan Association vs. Topeka, 20 Wall, Nos. 662, 663; Taylor vs. Porter, 4 Hill No. N.Y. 140.)

The above rule and discussion apply with equal force to the instruction to the committee in the original resolution, "to determine the parties responsible for the deal." It goes without saying that the Congress cannot authorize a committee to do what it itself cannot do. In other words, the Senate could not insist on the disclosure of Arnault's accomplice in the present state of the investigation if the Senate were conducting the inquiry itself instead of through a committee.

Our attention is called to the fact that "in the Philippines, the legislative power is vested in the Congress of the Philippines alone, and therefore that the Congress of the Philippines has a wider range of legislative field than the Congress of the United States or any state legislature." From this premise the inference is drawn that "the field of inquiry into which it (Philippine Congress) may enter is also wider."

This argument overlooks the important fact that congressional or legislative committees both here and in the United States, do not embark upon fishing expeditions in search of information which by chance "may be useful to legislation. Inquiries entrusted to congressional committee, whether here or in the United States, are necessarily for specific objects within the competence of the Congress to look into. I do not believe any reason, rule or principle could be found which would sustain the theory that just because the United States Congress or a state legislature could legislate on, say, only ten subjects and the Philippine Congress on twenty, the latter's power to

commit to prison for contempt is proportionately as great as that of the former. In the consideration of the legality of an imprisonment for contempt by each House, the power is gauged not by the greater or lesser number of subject matters that fall within its sphere of action, but by the answer to the question, has it jurisdiction over the matter under investigation? Bearing this distinction in mind, it is apparent that the power of a legislature to punish for contempt can be no greater nor less than that of any other. Were it possible for the Philippine Senate and the United States Senate to undertake an investigation of exactly identical anomalies in their respective departments of justice, could it be asserted with any support of logic that one Senate has a wider authority to imprison for contempt in such investigation simply because it has a "wider range of legislative field?"

It is said that the Senate bill has not been acted upon by the lower house and that even if it should pass in that chamber it would still have the President's veto to hurdle. It has been expressly stated at the oral argument, and there is insinuation in this Court's decision, that the revelation of the name or names of the person or persons who received the money may help in convincing the House of Representatives or the President of the wisdom of the pending measure. Entirely apart from the discussion in the preceding paragraphs, it is enough answer to this that the House of Representatives and the Chief Executive have their own idea of what they need to guide them in the discharge of their respective duties, and they have the facilities of their own for obtaining the requisite data.

There is another objection, more fundamental, to the Senate invoking the interest or convenience of the other House or the President as ground of jurisdiction. The House of Representatives and the President are absolutely independent of the Senate in the conduct of legislative and administrative inquiries, and the power of each House to imprison for contempt does not go beyond the necessity for its own self-preservation or for making its express powers effective. Each House exercises this power to protect or accomplish its own authority and not that of the other House or the President. Each House and the President are supposed to take care of their respective affairs. The two Houses and the Chief Executive act separately although the concurrence of ; the three is required in the passage of legislation and of both Houses in the approval of resolutions. As the United States Supreme Court in *Kilbourn vs. Thompson*, said, "No general power of inflicting punishment by the Congress (as distinct from a House is found in the Constitution." "An act of Congress—it said—which proposed to adjudge a man guilty of a crime and inflict the punishment, will be considered by all thinking men to be unauthorized by the Constitution."

Kilbourn vs. Thompson, supra, it is said, can not be relied on in this case as a precedent because, so it is also said, "the subject of the inquiry, which related to a private real-estate pool or partnership, was not within the jurisdiction of either House of Congress; while here it is not disputed that the subject of the inquiry, which relates to a transaction involving a questionable expenditure by the Government of P5,000,000 of public funds, is within the jurisdiction of the Senate." Yet the remarks of Judge Landis which are quoted in the majority decision point out that the inquiry "was a normal and customary part of the legislative process." Moreover, *Kilbourn vs. Thompson* is important, not for the matter it treated but for the principles it enunciated.

It is also said that *Kilbourn vs. Thompson* did not meet with universal approval as Judge Landis' article above mentioned shows. The jurist who delivered the opinion in that case, Mr. Justice Miller, was one of the "giants" who have ever sat on the Supreme Federal Bench, venerated and eminent for the width and depth of his learning. Subsequent decisions, as far as I have been able to ascertain, have not rejected or criticized but have followed it, and it still stands as a landmark in this branch of constitutional law.

If we can lean on private opinions and magazine articles for comfort, the petitioner can cite one by a legal scholar and author no less renown and respected than Judge Landis. I refer to Judge Wigmore who, referring to an investigation of the U.S. Department of Justice said in an article published in 19 (1925) *Illinois Law Review*, 452:

"The senatorial debauch of investigations—poking into political garbage cans and dragging the sewers of political intrigue—filled the winter of 1923-24 with a stench which has not yet passed away. Instead of

employing the constitutional, manly, fair procedure of impeachment, the Senate flung self-respect and fairness to the winds. As a prosecutor, the Senate presented a spectacle which cannot even be dignified by a comparison with the persecutive scoldings of Coke and Scroggs and Jeffreys, but fell rather in popular estimate to the level of professional searchers of the municipal dunghills.'

It is far from my thought to subscribe to this vituperation as applied to our Senate. Certainly, this august body did not only do the right thing but is entitled to the lasting gratitude of the people for taking the courageous stand it did in probing into an anomaly that robbed a depleted treasury of a huge amount. I have tried to make it clear that my disagreement with the majority lies not in the propriety or constitutionality of the investigation but in the pertinency to that investigation of a single question. The investigation, as has been said, was legal and commendable. My objection is that the Senate having started within the bounds of its authority, has, in entire good faith, overstepped those bounds and trespassed on a territory reserved to other branches of the government, when it imprisoned a witness for contumacy on a point that is unimportant, useless, impertinent and irrelevant, let alone moot.

Thus understood, this humble opinion does not conflict with the views of Judge Landis and all other advocates of wide latitude for congressional investigations. All are agreed, and the majority accept the proposition, that there is a limit to the legislative power to punish for contempt. The limit is set in *Anderson vs. Dunn* which Judge Landis approved—"the least possible power adequate to the end proposed."

Petition denied.

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