

NICANOR TAVORA, PETITIONER, VS. BONIFACIO N. GAVINA AND PEDRO O. ARCIAGA, RESPONDENTS.*G.R. No. L-1257. October 30, 1947*

Ponente: FERIA, J.

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There is no question about the fact alleged in the petition, that the petitioner was appointed justice of the peace of San Fernando, La Union, and took possession of his office on or about April 16, 1916, that he has not resigned nor has he been removed therefrom, and that he has ceased to act as such justice of the peace on December 1941, but reassumed his office after liberation, that is, on April 27, 1945.

According to section 9 Article VIII of the Constitution of the Philippines, the members of the Supreme Court and all judges of inferior courts shall hold office during good behavior until they reach the age of seventy years, or become incapacitated to discharge the duties of their office.

The fact that the petitioner has performed the duties of justice of the peace of the municipality of San Fernando, La Union, during the Japanese occupation of the Philippines, by virtue of appointment made by the Chairman of the Executive Commission, did not constitute an abandonment of his office held under the Commonwealth, because the government established in the Philippines during the Japanese occupation was not a foreign government, but a government established by the military occupant as an agency thereof to preserve order during the occupation. This Court, in its resolution denying the motion for reconsideration in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), held among others the following:

"(5) It is argued with insistence that the courts of the Commonwealth continued in the Philippines by the belligerent occupant became also courts of Japan, and their judgments and proceedings being acts of foreign courts can not now be considered valid and continued by the courts of the Commonwealth Government after the restoration of the latter. As we have already stated in our decision the fundamental reasons why said courts, while functioning during the Japanese regime, could not be considered as courts of Japan, it is sufficient now to invite attention to the decision of the Supreme Court of the United States in the case of *The Admittance, Jecker vs. Montgomery*, 13 How., 498; 14 Law. ed., 240, which we did not deem necessary to quote in our decision, in which it was held that 'the courts, established or sanctioned in Mexico during the war by the commanders of the American forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer thought proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize.' (*The Admittance, Jecker vs. Montgomery*, 13 How. 498; 14 Law. ed., 240.)"

The appointment by President Osmeña of the respondent Bonifacio N. Gavina as ad-interim justice of the peace of San Fernando on February 18, 1946, did not oust the petitioner from his office, not only because such appointment was disapproved by the Commission on Appointments, but because the petitioner had the

constitutional right to continue in office until he has reached the age of seventy years, and the President of the Commonwealth had no power to remove the petitioner from office without just cause and previous investigation.

The appointment of the other respondent Pedro O. Arciaga as justice of the peace of the same municipality made by the President of the Republic of the Philippines and approved by the Commission on Appointments on July 27, 1946, did not remove the petitioner from his office as justice of the peace of San Fernando, La Union, since the petitioner had the constitutional right to continue as such justice of the peace until he has reached 70 years; and upon the cessation of the American sovereignty over these Islands and the proclamation of the Philippine Independence, the petitioner did not cease to be justice of the peace of said municipality of San Fernando, La Union. In this connection the writer of this opinion in his concurring opinion in the case of *Brodett vs. De la Rosa* (77 Phil., 752), held the following:

"The petitioners impugn the validity of the judgment of the respondent judge on the ground that, as said respondent was not re-appointed by the President of the Republic of the Philippines, he must have ceased to be judge upon the proclamation of the Independence of the Philippines. Presumably the petitioners' contention is based on the legal maxim of statutory construction—*expressio unius est exclusio alterius*, and the provision of our Constitution relating to the officers of the Commonwealth who should continue in office after the proclamation of our Independence, which says:

" 'The officials elected and serving under this Constitution shall be constitutional officers of the free and independent Government of the Philippines and qualified to function in all respects as if elected directly under such Government, and shall serve their full terms of office as prescribed in this Constitution.'

"The Philippine Independence Act promulgated by the Congress of the United States on March 24, 1944, provides in its section 2 (b) (2) as follows:

" '(b) The constitution [of the Philippines] shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

" '(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of the Act shall be constitutional officers of the free and independent Government of the Philippine Islands and qualified to function in all respects as if elected directly under such Government, and shall served their full terms of office as prescribed in the Constitution.'

"The last quoted provision which is incorporated in paragraph or section 1 (2), Article XVII, of the Constitution, constitutes a limitation on the power of the framers of our Constitution to provide for the continuance or cessation of the officers therein mentioned. As they were not at liberty to insert or not said provision, its inclusion in our Constitution can not be considered as the expression of their intention that the officers therein mentioned shall continue as officer of the free and independent government of the Philippines. Consequently, the maxim *expressio unius est exclusio alterius*, which is based upon the rules of logic and the natural working of the human mind and serve as a guide in determining the probable intention of the makers of laws and constitutions expressly mentioning some and not others, can not be applied or invoked in support of the contention that, from the inclusion of said provision it may be inferred that it was the intention of the delegates of the Constitutional Convention which drafted our Constitution that appointive officers and employees and other elective officials should cease or not continue in office upon the proclamation of our Independence.

"On the other hand, as the framers of our Constitution were free to provide in the Constitution for the cessation or continuation in office of all appointive officers and employees and all other elective officers under the Commonwealth, if it were their intention that they should not continue or cease, they could and should have so expressly provided; but they did not do so. On the contrary, the Constitution prescribes that "The members of the

Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years or become incapacitated to discharge the duties of their office,' (section 9, Article VIII); that 'The Auditor General shall hold office for a term of ten years and may not be reappointed' (section 1, Article XI); that 'No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law' (section 4, Article XII).

"There is no doubt that the Constitution of the Philippines is a Constitution for the Commonwealth and the Republic. Article XVIII thereof provides that 'The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of the Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines.' The only provisions of the Constitution not applicable to the Commonwealth are those of Article XVII which became effective upon the declaration of the Independence of the Philippines; and the provisions of the Constitution not applicable to the Republic of the Philippines are those of Article XVI, or the transitory provisions from the former colonial or territorial to the Commonwealth Government.

"The Constitution, referring to the transition from the former Philippine Government to the Commonwealth, provides in its section 4, Article XVI, that 'All officers and employees of the Government of the Philippine Islands shall continue in office until the Congress shall provide otherwise, but all officers whose appointments are by this Constitution vested in the President shall vacate their respective offices upon the appointment and qualification of their successors, if such appointment is made within a period of one year from the date of the inauguration of the Commonwealth of the Philippines.' Undoubtedly, the framers of our Constitution deemed it necessary to so provide in order to avoid any doubt about their authority to continue in office; because the said officers and employees were appointed by authority of the People of the United States represented by the Congress and the President of the United States, or the Jones Law; while the officers and employees of the Commonwealth of the Philippines were to be appointed by authority of the People of the Philippines in whom the sovereignty resides and from whom all government authority emanates, according to section 1, Article II of the Constitution of the Philippines.

"But there is no similar provision in the Constitution covering the transition from the Commonwealth to the Republic. Evidently, it was not deemed necessary to provide expressly in the Constitution for the continuation of all the officers and employees of the Commonwealth Government, because they had to continue, in the absence of an express provision to the contrary, for they are officers and employees appointed by authority of the People of the Philippines, since the Commonwealth as well as the Republic are government established by the same Filipino people in the exercise of their sovereignty, limited under the Commonwealth and complete or absolute after the proclamation of our independence.

"That the Commonwealth of the Philippines was a sovereign government, though not absolute but subject to certain limitations imposed in the Independence Act and incorporated as Ordinance appended to our Constitution, was recognized not only by the Legislative Department or Congress of the United States in approving the Independence Law quoted and the Constitution of the Philippines, which contains the declaration that 'Sovereignty resides in the people and all government authority emanates from them' (section 1, Article II), but also by the Executive Department of the United States. The late President Roosevelt in one of his messages to Congress said, among others, 'As I stated on August 12, 1943, the United States in practice regards the Philippines as having now the status as a government of other independent nations—in fact all the attributes of complete and respected nationhood.' (Congressional Record Vol. 29, part 6, page 8173). And it is a principle upheld by the Supreme Court of the United States in many cases, among them in the case of *Jones vs. United States* (137 U. S.,

202; 34 Law. ed., 691, 696) that the question of sovereignty is 'a purely political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects.'

"A contrary construction, that is, that all appointive officers and employees of the Government of the Commonwealth, from the Chief Justice of the Supreme Court to an office messenger, had ceased ipso facto or automatically upon the proclamation of the Independence of the Philippines, would lead to enormous public inconvenience, a complete paralization of all the functions of the government, since it would necessarily require a considerable period of time to appoint the new officers and employees in their place. And if they were to hold over or continue in office until their successors are appointed, as there is no limitation provided in the Constitution as to the time within which the appointing powers may or must appoint their successors, a sort of Damocles' sword would be left hanging and ready to fall over the heads of said officers and employees for an indefinite period of time, to the detriment of the proper discharge of their functions and the independence that is to be expected from judges in the performance of their duties, essential for a good and clean government.

"In view of all the foregoing, it is evident that the respondent judge had the constitutional right to continue acting as judge after the proclamation of the Philippine Independence, and that, therefore, the judgment rendered by him in the present case is that of a judge de jure and valid."

The fact that during the pendency of the present case before this Court, the petitioner reached the age of seventy years, can not affect the question involved in the present case, that is, whether or not the petitioner was the rightful justice of the peace of San Fernando, La Union, at the time the respondent Arciaga was appointed on July, 1946, justice of the peace in lieu of the petitioner, and afterwards until he has reached the age of seventy years.

In view of the foregoing, we conclude and hold that the petitioner had the right to continue in office until he has reached the age of seventy years, with all the privileges and emoluments appurtenant to the office; and that the ad-interim appointment of respondent Gavina disapproved, and of the respondent Arciaga approved, by the Commission on Appointments, had no effect whatever on the status of the petitioner as justice of the peace of San Fernando until he has reached the age of seventy years.

Moran, C.J., Briones, Padilla, and Tuason, JJ., concur.

PARAS, J.:

I concur in the result.

CONCURRING

HILADO, J.:

I concur in the conclusion of the majority that petitioner had the right to continue in office until he reached the age of seventy years, with all the privileges and emoluments thereto, appertaining, and that the ad interim appointments of respondent Gavina which was disapproved by the Commission on Appointments, and that of respondent Arciaga which was approved thereby, did not operate to deprive petitioner of his right and title to said office until he reached the age of 70 years on January 8, 1947. My reasons follow:

Although I am of opinion that the constitutional right of members of the Supreme Court and judges of inferior courts to hold office during good behavior until they reach the age of 70 years or become incapacitated to discharge the duties of their office, is waivable by the incumbent, and should be construed without prejudice to

the legal effects of abandonment in proper cases, I do not see from the record that petitioner has waived said constitutional right nor that he has abandoned his office as justice of the peace of San Fernando, La Union, to which he was appointed and in which he duly qualified, and which he took possession of on April 16, 1916. Petitioner's appointment as justice of the peace of San Fernando, La Union, by the Chairman of the Philippine Executive Commission, and which he alleges to have accepted "fearful that he might be branded or suspected as being anti-Japanese with injurious consequences to himself and his family," under which he avers that he "acted, not willingly, as such Justice of the Peace until July, 1944, but remaining all the time loyal of the United States of America and the Commonwealth of the Philippines and now to the Republic of the Philippines" (Complaint, paragraph II [c], there being no allegation on the part of respondents that petitioner acted wilfully and disloyally toward his lawful government and to that of the United States), did not in my opinion work an abandonment of his Commonwealth appointment, for the double reason that if under the theory of the majority of this Court the Philippine Executive Commission was a de facto government, then it was a different government from the Commonwealth Government, which latter, under such theory, must be considered as suspended in the areas where such de facto government operated, with the consequence that when petitioner acted as justice of the peace of said de facto government his functions under the de jure government were in a state of suspension, which in turn give rise to the result that he did not need to abandon his Commonwealth appointment in order to be able to accept the occupation appointment; and that if the Philippine Executive Commission was not even a de facto government but a mere puppet organization, under my theory, then petitioner's appointment thereby was and is null and void so far as the Republic is concerned; and, lastly, so far as the record reveals, his acceptance of the occupation appointment was under enemy pressure, and for that reason was null and void any way.

Besides, it appears that petitioner after the reestablishment of the Commonwealth government, more specifically on April 27, 1945, was recalled to the office of the justice of the peace of San Fernando, La Union, and thereafter acted and continued to act as such justice of the peace until December 10, 1945, when he fell ill and obtained from the judge of the Court of First Instance of the province a grant of sick leave, upon which occasion respondent Gavina, who was. justice of the peace of San Gabriel and San Juan, La Union, was designated to act in petitioner's place "until he (petitioner) shall return to duty," (Exh. 1). These facts clearly show that to the mind of the Commonwealth Government petitioner had not been guilty of disloyalty or within breach of his oath of office during the occupation.

PABLO, and PERFECTO, JJ.:

We concur in this opinion of Mr. Justice Hilado.

RESOLUTION

December 11, 1947

FERIA, J.:

This Court did not exercise its discretion to require the appearance of the Solicitor General in this case under section 23, Rule 3, because the action does not involve the validity of any treaty, law, ordinance, or executive order or regulation; and did not notify him of the filing of this action, because it is not the duty of the Solicitor General to represent the respondent Arciaga under section 1661 (b) of the Administrative Code, since this is a quo warranto proceeding instituted against the said respondent, not in his official capacity as justice of the peace, but in his private capacity as an alleged intruder or person alleged to be unlawfully holding the public office of justice of the peace of San Fernando, La Union, to which the latter is entitled under the Constitution.

However, we shall pass upon the merits of the motion for reconsideration and new trial filed by the office of the Solicitor General (signed by the First Assistant Solicitor General Roberto A. Gianzon and Solicitor Francisco Carreon), in order to put in bolder relief the unassailability of our opinion on the right of the appointive officers of the Commonwealth to continue as officers of the Republic. For clearness' sake, we shall first state the basis of our opinion and then the arguments of the Solicitor General.

We hold, in our decision in this case, that the petitioner could not be removed from his office as justice of the peace of San Fernando, La Union, because section 9, Article VIII, of the Constitution provides that "the members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge their office." The transition from the Commonwealth to the Republic did not affect those officers appointed or holding office during the Commonwealth, since there can be no doubt that the Constitution of the Philippines is for the Commonwealth as well as for the Republic. The Constitution is for both, because Article XVIII thereof provides that "The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of the Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines."

We stated in our decision that, it cannot be contended that the intention of the framers of the Constitution to provide that appointive officers of the Commonwealth should cease or not continue as officers of the Republic, may be inferred from the inclusion of the provision of section 2 (b) of the Philippine Independence Act of Tydings-McDuffie Law in our Constitution (as section 1 [2], Article XVII) to the effect that "The officials elected and serving under this constitution shall be constitutional officers of the free and independent Government of the Philippines and qualified to function in all respects as if elected directly under such government, and shall serve their full term of office as prescribed in the Constitution. Because, the Congress of the United States having required the inclusion of the above quoted provision in our Constitution, the framers thereof were not free or at liberty to insert or not said provision therein; and therefore, the legal maxim "expressio unius est exclusio alterius" is not applicable, for this maxim is based upon the rules of logic and the natural working of the human mind, and serves as a guide in determining the probable intention of the makers of laws and constitutions in mentioning some and not others of the same class.

The only arguments of the Solicitor General in support of his motion for reconsideration and new trial which deserve some consideration, boils down to a syllogism the premises of which we are quoting verbatim from his memorandum, to wit:

Major premise: "Applying the maxim (inclusio unius est exclusio alterius) there can be no question as to the intention of the United States Congress, in providing that elective officials should continue as officials of the independent Republic, to exclude those not belonging to that category of officers [that is, that the latter should not continue in office upon proclamation of our Independence], On the other hand, the framers of our Constitution, by inserting without alteration or amendment the constitutional provision in question must be deemed to have also adopted the intention of the Congress of the United States as expressed in the Tydings-McDuffie Act."

Minor premise: "The framers of the Constitution were most certainly free to provide that other officers of the Commonwealth, besides those mentioned in said provision of the Philippine Independence Act, should continue in office under the Republic. Not having done so, the clear inference is that the framers of the Constitution likewise adopted the intention of the United States Congress."

Conclusion: Therefore, it was also the intention of the framers of the Constitution that the appointive and other elective officers of the Commonwealth should not continue as officers under the Republic.

The major and minor premises of the syllogism are not correct, and therefore the conclusion is untenable.

The major premise is incorrect, since it assumes that it was the intention of Congress, in requiring the insertion of the above-quoted provision, that the appointive and other elective officers of the Commonwealth should not continue in office as officers of the independent Government of the Philippines. For it is evidently clear that the intention of the Congress of the United States, in requiring that our Constitution should contain said transitory provision, was to establish only that limitation on the Constitution and leave the framers thereof free or at liberty to provide whether or not the appointive and other elective officers of the Commonwealth should continue as officers of the independent Government of the Philippines. The Solicitor General admits that "the framers of the Constitution were free to provide that other officers of the Commonwealth should continue in office under the Republic," and consequently that they should also not continue. Had it been the intention of the United States Congress that all the other officers of the Commonwealth should not continue as officers of the Republic, it should have enacted a provision to that effect among those required by the Tydings-McDuffie Act to be included in our Constitution.

The minor premise is also incorrect, for it was not possible for the framers of our Constitution to have adopted by mere implication the assumed intention of the United States Congress that the appointive and other elective officers of the Commonwealth should not continue as officers of the Republic. In the first place, because there was no such an intention of the United States Congress as already shown. And, besides because even assuming *arguendo* that the United States Congress, in requiring the insertion in our Constitution of the provision under consideration, had the intention that the appointive and other elective officers of the Commonwealth should not continue as officers of the Republic, it can not be inferred that the framers of our Constitution, in including said provision and not providing otherwise, have adopted such intention of the Congress. For the simple reason that the provision of the Tydings-McDuffie Law under consideration was not adopted but imposed upon the framers of our Constitution, and the latter were not free to include it or not. To adopt a constitutional or statutory provision with its necessary implications into another, presupposes freedom to do or not to do so. The legal maxim "*inclusio unius est exclusio alterius*" is predicated upon one's own voluntary act and not upon that of others. Therefore, motion is denied.

Moran, C.J., Pablo, Perfecto, Briones, and Tuason, JJ., concur.

Paras, J., concurs in the result.

CONCURRING

PERFECTO, J.:

The Solicitor General, in a pleading dated November 14, 1947, moved for the reconsideration of our decision in this case promulgated on October 30, 1947. The main question raised in the motion refers to the interpretation of subsection 2 of section 1 of Article XVII of the Constitution which reads as follows:

"The officials elected and serving under this Constitution shall be constitutional officers of the free and independent Government of the Philippines and qualified to function in all respects as if elected directly under such Government, and shall serve their full terms of office as prescribed in this Constitution."

The movant contends that, applying to the provision the Latin maxim "*expresio unius est exclusio alterius*," we should reverse the doctrine set in our decision to the effect that the appointive officers of the Commonwealth continue, without the need of a new appointment under the Republic, as *de jure* officers of the Republic and may not be removed from office by the appointment of other persons in their places except in the manner and for the

causes provided by the Constitution or by a statutory provision.

The question herein discussed has been raised for the first time in the petition dated July 29, 1946, filed in the original case of prohibition of Brodett vs. De la Rosa.

Petitioners in said case impunged the validity of an order issued on July 16, 1946, by Judge Mariano L. de la Rosa, of the Court of First Instance of Manila, upon the fact that said judge has been appointed as such before the proclamation of independence on July 4, 1946, and that not having been appointed under the Republic, he ceased to have authority to issue the order in question by virtue of the constitutional provision now under our consideration.

Petitioners argued that in accordance with subsection 2 of section 1 of Article XVII of the Constitution, upon the cessation of the Commonwealth Government on July 4, 1946, all its officers, with the exception of the elective ones, ceased to have any authority. They maintain that to retain said authority Judge De la Rosa must have been appointed anew by the President under the Republic before issuing the order in question.

Petitioner's contention was unanimously rejected by this Court in its decision promulgated on December 18, 1946. To elaborate upon the Court's theory, Mr. Justice Feria wrote a concurring opinion, the statements in which have been adopted in the majority decision in the instant case.

After a careful re-examination of the question, we cannot find our way for reversing our pronouncement as to the inapplicability of the maxim. There is no single valid ground in the arguments adduced by the Solicitor General to support the reversal.

The constitutional provision in question must be read and construed, not as an isolated and independent precept, but as an integral part of the whole document in which it is embodied, and in the light of the history of its enactment and insertion in the fundamental law.

As truthfully stated by the writer of the majority decision in this case, the provision has been inserted in compliance with one of the specific mandates of the Tydings-McDuffie Act. As one of the delegates to the Constitutional Convention, we are in a position to certify that this statement is based on fact.

It must be noted that there are three separate articles in the Constitution reproducing provisions of the Tydings-McDuffie Act—Article XVI, Transitory Provisions, Article XVII, Special Provisions Effective Upon the Proclamation of the Independence of the Philippines, and the unnumbered article entitled Ordinance Appended to the Constitution. At the time we drafted the Constitution we had in mind two paramount purposes, to produce the best possible constitution and to insure its approval by the President of the United States. Whenever we felt that there was a conflict between the two, we sacrificed the first for the sake of the second, having in mind that whatever defects the document might have could later be cured by amendment when the metropolis shall have withdrawn completely its sovereignty over our country.

The draft, as transferred to the Committee on Style, already embodied several provisions of the Tydings-McDuffie Act. Still concerned with the idea of insuring the approval of the President of the United States of America, the Committee on Style, composed of the most representative members of the Convention, including some of the foremost leaders of the two dominant political parties of the country, both committed to the platform of securing our national independence, added to the text many other provisions taken from the Tydings-McDuffie Act, so as to drive in the mind of President Roosevelt the conviction that none of the conditions imposed by the Tydings-McDuffie Act may remain unfulfilled. We wanted to be sure that the Constitution should come into effect and that upon the termination of the ten-year transitory period our national independence shall be proclaimed. The complete success of the political aims of the Constitutional Convention is born out by the events

of more than one decade of our national history.

Reading the provision in question, not as an isolated unit, but as an integral part, so it is, of the fundamental law, there is absolutely no ground in support of the theory advanced by the Solicitor General. The provisions of Articles XVI and XVII and of the Ordinance are of special and transitory character and, therefore, should be strictly construed. Nothing ought to be read in them which is not clearly intended by their clear wording.

There is nothing in the provision in question to the effect that non-elective officers and employees of the Commonwealth shall cease in their office upon the proclamation of independence, or that in the Republic they shall be divested of the rights, prerogatives and protection guaranteed and afforded to them by constitutional or statutory provisions during the Commonwealth.

Being declaratory and affirmative, the provision in question cannot comprehend any matter not covered by the clear meaning of its words.

Section IV of Article XV of the Constitution provides:

"No officer or employee of the Civil Service shall be removed or suspended except for cause as provided by law."

There is absolutely no incompatibility between this precept and the special provision in question. There is no conflict between the provision that elective officials of the Commonwealth shall complete their full terms of office after the proclamation of independence and the precept that the tenure of office of civil service officers and employees shall not be interrupted subject only to removal or suspension for cause as provided by law.

Under section 9 of Article VIII of the Constitution, the members of the Supreme Court and all judges of inferior courts "shall hold office during good behavior, until they reach the age of 70 years, or become incapacitated to discharge the duties of their office." This guaranty in favor of all the members of the judiciary is not and cannot be affected by the provision we are discussing. The two provisions may go hand in hand without any conflict.

The philosophy of the Constitution is premised on the idea of continuity and stability as a general principle guiding the transition from pre-Commonwealth to Republic Government so as to avoid a vacuum or hiatus disrupting the orderly processes of society and leading to anarchy.

From a substantial point of view, the change and transfer from the pre-Commonwealth Government to the Commonwealth Government has been more significant and important than the change from the Commonwealth to the Republic.

As a matter of fact, the last transition has been mostly a matter of form. Under Article XVIII of the Constitution, "upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine Independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines." A mere matter of name.

The change from pre-Commonwealth to Commonwealth Government has been attended by a revolution, peaceful and orderly but no less real. The American Governor General, appointed by the President of a foreign country, has been replaced by a Chief Executive elected by the free will of the Filipino people. It seems unnecessary to elaborate on further details as to the revolutionary change from American government to a Filipino government, from a foreign government to a national government.

Even the fundamental concept of national sovereignty started only to become a reality since the establishment of the Commonwealth. Such national sovereignty of the Filipino people has since then become recognized by the United States of America when, by authority of the Congress of the United States, President Roosevelt approved

our Constitution where it is declared: "The Philippines is a Republican state. Sovereignty resides in the people and all government authority emanates from them. (Section 1, Article II.)

In more than one statement issued during the last war, President Roosevelt has officially recognized our government as a government of a sovereign country. That recognition of our national sovereignty has been ratified by all the members of the United Nations, not only when the Philippines took part in the organization of the United Nations, but when all the other members have accepted the ratification of the Charter made by our Senate on August 30, 1945, almost a year before the proclamation of independence.

The general rule of continuity and stability, lying behind the philosophy followed by the drafters of the Constitution, is supported by the fact that, in order that the President of our people may place in government, especially in key positions, men of his confidence, in substitution of those appointed by the American Governor General, it has been necessary to insert the exception provided in section 4 of Article XVI, which reads as follows:

"All officers and employees in the existing Government of the Philippine Islands shall continue in office until the Congress shall provide otherwise, but all officers whose appointments are by this Constitution vested in the President shall vacate their respective offices upon the appointment and qualification of their successors, if such appointment is made within a period of one year from the date of the inauguration of the Commonwealth of the Philippines."

It will be noted that this section enunciates first the general rules of continuity and stability and then proceeds to provide for an exception, which is perfectly understandable if we take into consideration the revolutionary change resulting from the replacement of a foreign appointive Chief Executive by an elective Filipino President.

The transition from the Commonwealth Government to the Government of the Republic being merely formal, the delegates to the Constitutional Convention did not perceive any reason why the appointive officers should be disturbed in their positions. By the same token by which we did not feel it necessary to disturb in their positions the minor officers and employees upon the advent of the Commonwealth, because their functions are strictly administrative and are regulated by Civil Service rules, in accordance with Article XII of the Constitution and pertinent statutory provisions, and there was no reasons to believe that the continuation in office of Commonwealth minor officers and employees may offer any obstacle to any administrative policy which the Filipino President may adopt or any legislative policy which the National Assembly may enact, in section 4 of Article XVI we circumscribed, the exception to officers whose appointments are vested upon the President on the ground that many of them were exercising policy-determining functions to control and supervise which the President should have a free hand for the success of his administration.

Upon the advent of the Republic, policy-determining officers derived their appointment from the elective President of the Philippines and not from any other Chief Executive. Under our system of representative democracy, as established by the fundamental law, their authority emanated from the sovereign people, the latter being represented by the elective officials who will continue holding their offices after independence. There was absolutely no reason why we should have authorized a new revamping of the government, prone to provoke unnecessary political complications, uncertainty and uneasiness in public service, set aside merits in the service, and give rise to understandable machinations, each and all of which are not conducive to the bolstering of public interest but, on the contrary, are highly detrimental to the general well-being of the people.

Movant's theory, besides lacking any basis in the clear text of the Constitution, is highly dangerous. In effect, it will give the President unlimited discretion to change part of or the whole membership of the Supreme Court, the great majority of the judges of inferior courts, and all other officers whose appointment is vested in him by the

Constitution, and high executive officers unlimited discretion to replace with outsiders, excluding political favorites, thousands upon thousands of officers and employees in the civil service, the overwhelming majority of whom have been rendering long years of honest, faithful, efficient, and meritorious service to the government and to the people. Shall any one be surprised if under such situation the backbone of our judicial system and the solid body of our civil service shall be broken into pieces to be used as pawns in political maneuvers? After smashing the principle of stability which guarantees the independence of the judiciary and an honest and efficient civil service, the resulting situation of insecurity will not fail to lead to evil consequences, highly detrimental to public peace.

No one can ignore the possibility that the situation may be used to further entrench in government the political party in power, no matter what the people may feel about it, and wipe out all opposition to insure the existence of a one-party system, a step beyond which lies a truculent dictatorship. Judicial independence and civil service stability are indispensable in the democratic system of government established by the Constitution. Their necessary alternatives are fascism and tyranny. To accept these alternatives will be an unpardonable betrayal of our conscience and of our people.

The other grounds alleged in the motion for reconsideration being also unmeritorious, so much so that we deem it unnecessary to waste any time on them, we hold and so vote that the motion should be, as it is now, denied.

CONCURRING

HILADO, J.:

I concur in the foregoing resolution, without prejudice to my concurring opinion when this case was decided originally. I only wish to add that when Article XVIII of the Constitution was included therein, providing that "upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines," the framers must have intended the Republic of the Philippines, which was there provided to automatically come into existence upon the happening of the event therein mentioned, to be a republican government complete with the same three great departments, their respective bureaus, divisions and subordinate offices, and their respective personnel, that made up the Government of the Commonwealth of the Philippines, which was thus to be transformed into the Republic. By its very nature a "republic, as that contemplated by the Tydings-McDuffie Act and the Constitution of the Philippines adopted pursuant thereto, is a tripartite form of government composed of the legislative, the executive, and the judicial departments. Most assuredly, the framers did not intend that upon the withdrawal of the sovereignty of the United States and the proclamation of the independence of the Philippines there should emerge a republic without a judicial department and without all other governmental offices occupied by appointive officials, as well as elective ones not constitutional in nature; and just as certainly can it be assumed that said framers did not intend to leave with the newly born republic upon its emergence only the names of the offices and positions constituting the judiciary, as well as such other appointive and elective offices as were not constitutional in nature, without their incumbents who were occupying them under the Commonwealth Government at the very moment of its transformation into the Republic.

If it be considered, as I think it should, that the framers of the Constitution in Article XVIII thereof intended that all the great departments of the Commonwealth government, with all their bureaus, divisions and subordinate offices, and all their personnel, should continue intact and go with the government when it was automatically transformed into that of the Republic of the Philippines upon the happening of the historic event therein spoken of, it will follow without saying that those of said officials whose offices were constitutional would continue in

their respective offices by virtue of the same constitution, among whose provisions section 9 of Article VIII would still continue to govern. Concretely referring to the judiciary, as we have to in the present incident, it is elementary that a court can not exist without a judge (21 C.J.S., p. 214, section 139).

Therefore, the judicial officers referred to in said section 9 were under the Republic, just as they had under the Commonwealth, to "hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office."

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