

CO KIM CHAM (ALIAS CO CHAM), PETITIONER, VS. EUSEBIO VALDEZ TAN KEH AND ARSENIO P. DIZON, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENTS.*G.R. No. L-5.[1]. September 17, 1945*

Ponente: FERIA, J.

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This is a petition for mandamus in which petitioner prays that the respondent judge of the lower court be ordered to continue the proceedings in civil case No. 3012 of said court, which were initiated under the regime of the so-called Republic of the Philippines established during the Japanese military occupation of these Islands.

The respondent judge refused to take cognizance of and continue the proceedings in said case on the ground that the proclamation issued on October 23, 1944, by General Douglas MacArthur had the effect of invalidating and nullifying all judicial proceedings and judgments of the courts of the Philippines under the Philippine Executive Commission and the Republic of the Philippines established during the Japanese military occupation, and that, furthermore, the lower courts have no jurisdiction to take cognizance of and continue judicial proceedings pending in the courts of the defunct Republic of the Philippines in the absence of an enabling law granting such authority. And the same respondent, in his answer and memorandum filed in this Court, contends that the government established in the Philippines during the Japanese occupation were not de facto governments.

On January 2, 1942, the Imperial Japanese Forces occupied the City of Manila, and on the next day their Commander in Chief proclaimed "the Military Administration under martial law over the districts occupied by the Army." In said proclamation, it was also provided that "so far as the Military Administration permits, all the laws now in force in the Commonwealth, as well as executive and judicial institutions, shall continue to be effective for the time being as in the past," and "all public officials shall remain in their present posts and carry on faithfully their duties as before."

A civil government or central administrative organization under the name of "Philippine Executive Commission" was organized by Order No. 1 issued on January 23, 1942, by the Commander in Chief of the Japanese Forces¹ in the Philippines, and Jorge B. Vargas, who was appointed Chairman thereof, was instructed to proceed to the immediate coordination of the existing central administrative organs and of judicial courts, based upon what had existed theretofore, with the approval of the said Commander in Chief, who was to exercise jurisdiction over judicial courts.

The Chairman of the Executive Commission, as head of the central administrative organization, issued Executive Orders Nos. 1 and 4, dated January 30 and February 5, 1942, respectively, in which the Supreme Court, Court of Appeals, Courts of First Instance, and the justices of the peace and municipal courts under the Commonwealth were continued with the same jurisdiction, in conformity with the instructions given to the said Chairman of the Executive Commission by the Commander in Chief of Japanese Forces in the Philippines in the latter's Order No. 3 of February 20, 1942, concerning basic principles to be observed by the Philippine Executive Commission in

exercising legislative, executive and judicial powers. Section 1 of said Order provided that "activities of the administrative organs and judicial courts in the Philippines shall be based upon the existing statutes, orders, ordinances and customs * * *."

On October 14, 1943, the so-called Republic of the Philippines was inaugurated, but no substantial change was effected thereby in the organization and jurisdiction of the different courts that functioned during the Philippine Executive Commission, and in the laws they administered and enforced.

On October 23, 1944, a few days after the historic landing in Leyte, General Douglas MacArthur issued a proclamation to the People of the Philippines which declared:

"1. That the Government of the Commonwealth of the Philippines is, subject to the supreme authority of the Government of the United States, the sole and only government having legal and valid jurisdiction over the people in areas of the Philippines free of enemy occupation and control;

"2. That the laws now existing on the statute books of the Commonwealth of the Philippines and the regulations promulgated pursuant thereto are in full force and effect and legally binding upon the people in areas of the Philippines free of enemy occupation and control; and

"3. That all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippine free of enemy occupation and control."

On February 3, 1945, the City of Manila was partially liberated and on February 27, 1945, General MacArthur, on behalf of the Government of the United States, solemnly declared "the full powers and responsibilities under the Constitution restored to the Commonwealth whose seat is here re-established as provided by law."

In the light of these facts and events of contemporary history, the principal questions to be resolved in the present case may be reduced to the following: (1) Whether the judicial acts and proceedings of the court existing in the Philippines under the Philippine Executive Commission and the Republic of the Philippines were good and valid and remained so even after the liberation or reoccupation of the Philippines by the United States and Filipino forces; (2) Whether the proclamation issued on October 23, 1944, by General Douglas McArthur, Commander in Chief of the United States Army, in which he declared "that all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control," has invalidated all judgments and judicial acts and proceedings of the said courts; and (3) If the said judicial acts and proceedings have not been invalidated by said proclamation, whether the present courts of the Commonwealth, which were the same courts existing prior to, and continued during, the Japanese military occupation of the Philippines, may continue those proceedings pending in said courts at the time the Philippines were reoccupied and liberated by the United States and Filipino forces, and the Commonwealth of the Philippines were reestablished in the Islands.

We shall now proceed to consider the first question, that is, whether or not under the rules of international law the judicial acts and proceedings of the courts established in the Philippines under the Philippine Executive Commission and the Republic of the Philippines were good and valid and remained good and valid even after the liberation or reoccupation of the Philippines by the United States and Filipino forces.

1. It is a legal truism in political and international law that all acts and proceedings of the legislative, executive, and judicial departments of a de facto government are good and valid. The question to be determined is whether or not the governments established in these Islands under the names of Philippine Executive Commission and Republic of the Philippines during the Japanese military occupation or regime were de facto governments. If they were, the judicial acts and proceedings of those governments remain good and valid even after the liberation or

reoccupation of the Philippines by the American and Filipino forces.

There are several kinds of de facto governments. The first, or government de facto in a proper legal sense, is that government that gets possession and control of, or usurps, by force or by the voice of the majority, the rightful legal government and maintains itself against the will of the latter, such as the government of England under the Commonwealth, first by Parliament and later by Cromwell as Protector. The second is that which is established and maintained by military forces who invade and occupy a territory of the enemy in the course of war, and which is denominated a government of paramount force, as the cases of Castine, in Maine, which was reduced to British possession in the war of 1812, and of Tampico, Mexico, occupied during the war with Mexico, by the troops of the United States. And the third is that established as an independent government by the inhabitants of a country who rise in insurrection against the parent state, such as the government of the Southern Confederacy in revolt against the Union during the war of secession. We are not concerned in the present case with the first kind, but only with the second and third kinds of de facto governments.

Speaking of government "de facto" of the second kind, the Supreme Court of the United States, in the case of *Thorington vs. Smith* (8 Wall., 1), said: "But there is another description of government, called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1), that its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful government; and (2), that while it exists it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, or wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less directly by military force * * *. One example of this sort government is found in the case of Castine, in Maine, reduced to British possession in the war of 1812 * * *. *U. S. vs. Rice* (4 Wheaton, 253). A like example is found in the case of Tampico, occupied during the war with Mexico, by the troops of the United States * * *. *Fleming vs. Page* (9 Howard, 614). These were cases of temporary possession of territory by lawful and regular governments at war with the country of which the territory so possessed was part."

The powers and duties of de facto governments of this description are regulated in Section III of the Hague Conventions of 1907, which is a revision of the provisions of the Hague Conventions of 1899 on the same subject of Military Authority over Hostile Territory. Article 43 of said Section III provides that "the authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to reestablish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

According to these precepts of the Hague Conventions, as the belligerent occupant has the right and is burdened with the duty to insure public order and safety during his military occupation, he possesses all the powers of a de facto government, and he can suspend the old laws and promulgate new ones and make such changes in the old as he may see fit, but he is enjoined to respect, unless absolutely prevented by the circumstances prevailing in the occupied territory, the municipal laws in force in the country, that is, those laws which enforce public order and regulate the social and commercial life of the country. On the other hand, laws of a political nature or affecting political relations, such as, among others, the right of assembly, the right to bear arms, the freedom of the press, and the right to travel freely in the territory occupied, are considered as suspended or in abeyance during the military occupation. Although the local and civil administration of justice is suspended as a matter of course as soon as a country is militarily occupied, it is not usual for the invader to take the whole administration into his own hands. In practice, the local ordinary tribunals are authorized to continue administering justice; and the

judges and other judicial officers are kept in their posts if they accept the authority of the belligerent occupant or are required to continue in their positions under the supervision of the military or civil authorities appointed by the Commander in Chief of the occupant. These principles and practice have the sanction of all publicists who have considered the subject, and have been asserted by the Supreme Court and applied by the Presidents of the United States.

The doctrine upon this subject is thus summed up by Halleck, in his work on International Law (Vol. 2, p. 444): "The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. We, therefore, do not look to the Constitution or political institutions of the conqueror, for authority to establish a government for the territory of the enemy in his possession, during its military occupation, nor for the rules by which the powers of such government are regulated and limited. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world, and confirmed by the writings of publicists and decisions of courts—in fine, from the law of nations * * *. The municipal laws of a conquered territory, or the laws which regulate private rights, continue in force during military occupation, except so far as they are suspended or changed by the acts of the conqueror * * *. He, nevertheless, has all the powers of a de facto government, and can at his pleasure either change the existing laws or make new ones."

And applying the principles for the exercise of military authority in an occupied territory, which were later embodied in the said Hague Conventions, President McKinley, in his executive order to the Secretary of War of May 19, 1898, relating to the occupation of the Philippines by United States forces, said in part: "Though the powers of the military occupant are absolute and supreme, and immediately operate upon the political condition of the inhabitant, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent; and in practice they are not usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals, substantially as they were before the occupation. This enlightened practice is, so far as possible, to be adhered to on the present occasion. The judges and the other officials connected with the administration of justice may, if they accept the authority of the United States, continue to administer the ordinary law of the land as between man and man under the supervision of the American Commander in Chief." (Richardson's Messages and Papers of President, X, p. 209.)

As to "de facto" government of the third kind, the Supreme Court of the United States, in the same case of *Thorington vs. Smith*, supra, recognized the government set up by the Confederate States as a de facto government. In that case, it was held that "the central government established for the insurgent States differed from the temporary governments at Castine and Tampico in the circumstance that its authority did not originate in lawful acts of regular war; but it was not, on that account, less actual or less supreme. And we think that it must be classed among the governments of which these are examples * * *."

In the case of *William vs. Bruffy* (96 U. S. 176, 192), the Supreme Court of the United States, discussing the validity of the acts of the Confederate States, said: "The same general form of government, the same general laws for the administration of justice and the protection of private rights, which had existed in the States prior to the rebellion, remained during its continuance and afterwards. As far as the Acts of the States do not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the Constitution, they are, in general, to be treated as valid and binding. As we said in *Horn vs. Lockhart* (17 Wall, 570; 21 Law. ed., 657): "The existence of a state of insurrection and war did not loosen the bonds of society, or do away with civil government or the regular administration of the laws. Order was to be preserved, police regulations maintained,

crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated, precisely as in the time of peace. No one, that we are aware of, seriously questions the validity of judicial or legislative Acts in the insurrectionary States touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution'. The same doctrine has been asserted in numerous other cases."

And the same court, in the case of *Baldy vs. Hunter* (171 U. S., 388, 400), held: "That what occurred or was done in respect of such matters under the authority of the laws of these local de facto governments should not be disregarded or held to be invalid merely because those governments were organized in hostility to the Union established by the national Constitution; this, because the existence of war between the United States and the Confederate States did not relieve those who are within the insurrectionary lines from the necessity of civil obedience, nor destroy the bonds of society nor do away with civil government or the regular administration of the laws, and because transactions in the ordinary course of civil society as organized within the enemy's territory although they may have indirectly or remotely promoted the ends of the de facto or unlawful government organized to effect a dissolution of the Union, were without blame 'except when proved to have been entered into with actual intent to further invasion or insurrection;'" and "That judicial and legislative acts in the respective states composing the so-called Confederate States should be respected by the courts if they were not hostile in their purpose or mode of enforcement to the authority of the National Government, and did not impair the rights of citizens under the Constitution."

In view of the foregoing, it is evident that the Philippine Executive Commission, which was organized by Order No. 1, issued on January 23, 1942, by the Commander of the Japanese forces, was a civil government established by the military forces of occupation and therefore a de facto government of the second kind. It was not different from the government established by the British in Castine, Maine, or by the United States in Tampico, Mexico. As Halleck says, "The government established over an enemy's territory during the military occupation may exercise all the powers given by the laws of war to the conqueror over the conquered, and is subject to all restrictions which that code imposes. It is of little consequence whether such government be called a military or civil government. Its character is the same and the source of its authority the same. In either case it is a government imposed by the laws of war, and so far as it concerns the inhabitants of such territory or the rest of the world, those laws alone determine the legality or illegality of its acts." (Vol. 2, p. 466.) The fact that the Philippine Executive Commission was a civil and not a military government and was run by Filipinos and not by Japanese nationals, is of no consequence. In 1806, when Napoleon occupied the greater part of Prussia, he retained the existing administration under the general direction of a French official (Langfey History of Napoleon, 1, IV, 25); and, in the same way, the Duke of Wellington, on invading France, authorized the local authorities to continue the exercise of their functions, apparently without appointing an English superior. (Wellington Despatches, XI, 307.) The Germans, on the other hand, when they invaded France in 1870, appointed their own officials, at least in Alsace and Lorraine, in every department of administration and of every rank. (Calvo, pars. 2186-93; Hall, International Law, 7th ed., p. 505, note 2.)

The so-called Republic of the Philippines, apparently established and organized as a sovereign state independent from any other government by the Filipino people, was, in truth and reality, a government established by the belligerent occupant or the Japanese forces of occupation. It was of the same character as the Philippine Executive Commission, and the ultimate source of its authority was the same—the Japanese military authority and government. As General MacArthur stated in his proclamation of October 23, 1944, a portion of which has been already quoted, "under enemy duress, a so-called government styled as the 'Republic of the Philippines' was established on October 14, 1943, based upon neither the free expression of the people's will nor the sanction of the

Government of the United States." Japan had no legal power to grant independence to the Philippines or transfer the sovereignty of the United States to, or recognize the latent sovereignty of, the Filipino people, before its military occupation and possession of the Islands had matured into an absolute and permanent dominion or sovereignty by a treaty of peace or other means recognized in the law of nations. For it is a well-established doctrine in International Law, recognized in Article 45 of the Hague Conventions of 1907 (which prohibits compulsion of the population of the occupied territory to swear allegiance to the hostile power), that belligerent occupation, being essentially provisional, does not serve to transfer sovereignty over the territory controlled although the de jure government is during the period of occupancy deprived of the power to exercise its rights as such. (Thirty Hogshead of Sugar vs. Boyle, 9 Cranch, 191; United States vs. Rice, 4 Wheat., 246; Fleming vs. Page, 9 Howard, 603; Downes vs. Bidwell, 182 U. S., 345.) The formation of the Republic of the Philippines was a scheme contrived by Japan to delude the Filipino people into believing in the apparent magnanimity of the Japanese gesture of transferring or turning over the rights of government into the hands of Filipinos. It was established under the mistaken belief that by doing so, Japan would secure the cooperation or at least the neutrality of the Filipino people in her war against the United States and other allied nations.

Indeed, even if the Republic of the Philippines had been established by the free will of the Filipino people who, taking advantage of the withdrawal of the American forces from the Islands, and the occupation thereof by the Japanese forces of invasion, had organized an independent government under that name with the support and backing of Japan, such government would have been considered as one established by the Filipinos in insurrection or rebellion against the parent state or the United States. And, as such, it would have been a de facto government similar to that organized by the confederate states during the war of secession and recognized as such by the Supreme Court of the United States in numerous cases, notably those of Thorington vs. Smith, Williams vs. Bruffy, and Badly vs. Hunter, above quoted; and similar to the short-lived government established by the Filipino insurgents in the Island of Cebu during the Spanish-American war, recognized as a de facto government by the Supreme Court of the United States in the case of McCleod vs. United States (299 U. S., 416). According to the facts in the last-named case, the Spanish forces evacuated the Island of Cebu on December 25, 1898, having first appointed a provisional government, and shortly afterwards, the Filipinos, formerly in insurrection against Spain, took possession of the Island and established a republic, governing the Island until possession thereof was surrendered to the United States on February 22, 1898. And the said Supreme Court held in that case that "such government was of the class of de facto governments described in I Moore's International Law Digest, S 20, * * * 'called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount force * * *'." That is to say, that the government of a country in possession of belligerent forces in insurrection or rebellion against the parent state, rests upon the same principles as that of a territory occupied by the hostile army of an enemy at regular war with the legitimate power.

The governments by the Philippine Executive Commission and the Republic of the Philippines during the Japanese military occupation being de facto governments, it necessarily follows that the judicial acts and proceedings of the courts of justice of those governments, which are not of a political complexion, were good and valid, and, by virtue of the well-known principle of postliminy (postliminium) in international law, remained good and valid after the liberation or reoccupation of the Philippines by the American and Filipino forces under the leadership of General Douglas MacArthur. According to that well-known principle in international law, the fact that a territory which has been occupied by an enemy comes again into the power of its legitimate government or sovereignty, "does not, except in a very few cases, wipe out the effects of acts done by an invader, which for one reason or another it is within his competence to do. Thus judicial acts done under his control, when they are not of a political complexion, administrative acts so done, to the extent that they take effect during the continuance of his control, and the various acts done during the same time by private persons under the sanction of municipal law,

remain good. Were it otherwise, the whole social life of a community would be paralyzed by an invasion; and as between the state and individuals' the evil would be scarcely less,—it would be hard for example that payment of taxes made under duress should be ignored, and it would be contrary to the general interest that sentences passed upon criminals should be annulled by the disappearance of the intrusive government." (Hall, International Law, 7th ed., p. 518.) And when the occupation and the abandonment have been each an incident of the same war as in the present case, postliminy applies, even though the occupant has acted as conqueror and for the time substituted his own sovereignty, as the Japanese intended to do apparently in granting independence to the Philippines and establishing the so-called Republic of the Philippines. (Taylor, International Law, p. 615.)

That not only judicial but also legislative acts of de facto governments, which are not of a political complexion, are and remain valid after reoccupation of a territory occupied, by a belligerent occupant, is confirmed by the Proclamation issued by General Douglas MacArthur on October 23, 1944, which declares null and void all laws, regulations and processes of the governments established in the Philippines during the Japanese occupation, for it would not have been necessary for said proclamation to abrogate them if they were invalid ab initio.

2. The second question hinges upon the interpretation of the phrase "processes of any other government" as used in the above-quoted proclamation of General Douglas MacArthur of October 23, 1944—that is, whether it was the intention of the Commander in Chief of the American Forces to annul and avoid thereby all judgments and judicial proceedings of the courts established in the Philippines during the Japanese military occupation.

The phrase "processes of any other government" is broad and may refer not only to judicial processes, but also to administrative or legislative, as well as constitutional, processes of the Republic of the Philippines or other governmental agencies established in the Islands during the Japanese occupation. Taking into consideration the fact that, as above indicated, according to the well-known principles of international law all judgments and judicial proceedings, which are not of a political complexion, of the de facto governments during the Japanese military occupation were good and valid before and remained so after the occupied territory had come again into the power of the titular sovereign, it should be presumed that it was not, and could not have been, the intention of General Douglas MacArthur, in using the phrase "processes of any other government" in said proclamation, to refer to judicial processes, in violation of said principles of international law. The only reasonable construction of the said phrase is that it refers to governmental processes other than judicial processes or court proceedings, for according to a well-known rule of statutory construction, set forth in 25 R. C. L., p. 1028, "a statute ought never to be construed to violate the law of nations if any other possible construction remains."

It is true that the commanding general of a belligerent army of occupation, as an agent of his government, may not unlawfully suspend existing laws and promulgate new ones in the occupied territory, if and when the exigencies of the military occupation demand such action. But even assuming that, under the law of nations, the legislative power of a commander in chief of military forces who liberates or reoccupies his own territory which has been occupied by an enemy, during the military and before the restoration of the civil regime, is as broad as that of the commander in chief of the military forces of invasion and occupation (although the exigencies of military reoccupation are evidently less than those of occupation), it is to be presumed that General Douglas MacArthur, who was acting as an agent or a representative of the Government and the President of the United States, constitutional commander in chief of the United States Army, did not intend to act against the principles of the law of nations asserted by the Supreme Court of the United States from the early period of its existence, applied by the Presidents of the United States, and later embodied in the Hague Conventions of 1907, as above indicated. It is not to be presumed that General Douglas MacArthur, who enjoined in the same proclamation of October 23, 1944, "upon the loyal citizens of the Philippines full respect and obedience to the Constitution of the Commonwealth of the Philippines," should not only reverse the international policy and practice of his own

government, but also disregard in the same breath the provisions of section 3, Article II, of our Constitution, which provides that "The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation."

Moreover, from a contrary construction great inconvenience and public hardship would result, and great public interests would be endangered and sacrificed, for disputes or suits already adjudged would have to be again settled, accrued or vested rights nullified, sentences passed on criminals set aside, and criminals might easily become immune for evidence against them may have already disappeared or be no longer available, especially now that almost all court records in the Philippines have been destroyed by fire as a consequence of the war. And it is another well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests; would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words. (25 R.C. L., pp. 1025, 1027.)

The mere conception or thought of possibility that the titular sovereign or his representatives who reoccupies a territory occupied by an enemy, may set aside or annul all the judicial acts or proceedings of the tribunals which the belligerent occupant had the right and duty to establish in order to insure public order and safety during military occupation, would be sufficient to paralyze the social life of the country or occupied territory, for it would have to be expected that litigants would not willingly submit their litigation to courts whose judgments or decisions may afterwards be annulled, and criminals would not be deterred from committing crimes or offenses in the expectancy that they may escape the penalty if judgments rendered against them may be afterwards set aside.

That the proclamation has not invalidated all the judgments and proceedings of the courts of justice during the Japanese regime, is impliedly confirmed by Executive Order No. 37, which has the force of law, issued by the President of the Philippines on March 10, 1945, by virtue of the emergency legislative power vested in him by the Constitution and the laws of the Commonwealth of the Philippines. Said Executive Order abolished the Court of Appeals, and provided "that all cases which have heretofore been duly appealed to the Court of Appeals shall be transmitted to the Supreme Court for final decision." This provision impliedly recognizes that the judgments and proceedings of the courts during the Japanese military occupation have not been invalidated by the proclamation of General MacArthur of October 23, because the said Order does not say or refer to cases which had been duly appealed to said court prior to the Japanese occupation, but to cases which had theretofore, that is, up to March 10, 1945, been duly appealed to the Court of Appeals; and it is to be presumed that almost all, if not all, appealed cases pending in the Court of Appeals prior to the Japanese military occupation of Manila on January 2, 1942, had been disposed of by the latter before the restoration of the Commonwealth Government in 1945; while almost all, if not all, appealed cases pending on March 10, 1945 in the Court of Appeals were from judgments rendered by the Court of First Instance during the Japanese regime.

The respondent judge quotes a portion of Wheaton's International Law which say: "Moreover when it is said that an occupier's acts are valid and under international law should not be abrogated by the subsequent conqueror, it must be remembered that no crucial instances exist to show that if his acts should be reversed, any international wrong would be committed. What does happen is that most matters are allowed to stand by the restored government, but the matter can hardly be put further than this." (Wheaton, International Law, War, 7th English edition of 1944, p. 245.) And from this quotation the respondent judge "draws the conclusion that whether the acts of the occupant should be considered valid or not, is a question that is up to the restored government to decide; that there is no rule of international law that denies to the restored government the right to exercise its discretion on the matter, imposing upon it in its stead the obligation of recognizing and enforcing the acts of the overthrown government."

There is no doubt that the subsequent conqueror has the right to abrogate most of the acts of the occupier, such as the laws, regulations and processes other than judicial of the government established by the belligerent occupant. But in view of the fact that the proclamation uses the words "processes of any other government" and not "judicial processes" precisely, it is not necessary to determine whether or not General Douglas MacArthur had power to annul and set aside all judgments and proceedings of the courts during the Japanese occupation. The question to be determined is whether or not it was his intention, as representative of the President of the United States, to avoid or nullify them. If the proclamation had, expressly or by necessary implication, declared null and void the judicial processes of any other government, it would be necessary for this court to decide in the present case whether or not General Douglas MacArthur had authority to declare them null and void. But the proclamation did not so provide, undoubtedly because the author thereof was fully aware of the limitations of his powers as Commander in Chief of the Military Forces of liberation or subsequent conqueror.

Not only the Hague Regulations, but also the principles of international law, as they result from the usages established between civilized nations, the laws of humanity and the requirements of the public conscience, constitute or form the law of nations, (Preamble of the Hague Conventions; Westlake, *International Law*, 2d ed., Part II, p. 61.) Article 43, section III, of the Hague Regulations or Conventions which we have already quoted in discussing the first question, imposes upon the occupant the obligation to establish courts; and Article 23 (h), section II, of the same Conventions, which prohibits the belligerent occupant "to declare * * * suspended * * * in a Court of Law the rights and action of the nationals of the hostile party," forbids him to make any declaration preventing the inhabitants from using their courts to assert or enforce their civil rights. (Decision of the Court of Appeals of England in the case of *Porter vs. Fruedenburg*, L. R. [1915], 1 K. B., 857.) If a belligerent occupant is required to establish courts of justice in the territory occupied, and forbidden to prevent the nationals thereof from asserting or enforcing therein their civil rights, by necessary implication, the military commander of the forces of liberation or the restored government is restrained from nullifying or setting aside the judgments rendered by said courts in their litigation during the period of occupation. Otherwise, the purpose of these precepts of the Hague Conventions would be thwarted, for to declare them null and void would be tantamount to suspending in said courts the rights and action of the nationals of the territory during the military occupation thereof by the enemy. It goes without saying that a law that enjoins a person to do something will not at the same time empower another to undo the same. Although the question whether the President or commanding officer of the United States Army has violated restraints imposed by the constitution and laws of his country is obviously of a domestic nature, yet, in construing and applying limitations imposed on the executive authority, the Supreme Court of the United States, in the case of *Ochoa vs. Hernandez* (230 U. S., 139), has declared that they "arise from general rules of international law and from fundamental principles known wherever the American flag flies."

In the case of *Raymond vs. Thomas* (91 U. S., 712), a special order issued by the officer in command of the forces of the United States in South Carolina after the end of the Civil War, wholly annulling a decree rendered by a court of chancery in that state in a case within its jurisdiction, was declared void, and not warranted by the acts approved respectively March 2, 1867 (14 Stat., 428), and July 19 of the same year (15 id., 14), which denned the powers and duties of military officers in command of the several states then lately in rebellion. In the course of its decision the court said: "We have looked carefully through the acts of March 2, 1867 and July 19, 1867. They give very large governmental powers to the military commanders designated, within the States committed respectively to their jurisdiction; but we have found nothing to warrant the order here in question * * *. The clearest language would be necessary to satisfy us that Congress intended that the power given by these acts should be so exercised * * *. It was an arbitrary stretch of authority, needful to no good end that can be imagined. Whether Congress could have conferred the power to do such an act is a question we are not called upon to consider. It is an unbending rule of law that the exercise of military power, where the rights of the citizen are

concerned, shall never be pushed beyond what the exigency requires. (Mitchell vs. Harmony, 13 How., 115; Warden vs. Bailey, 4 Taunt., 67; Fabrigas vs. Moysten, 1 Cowp., 161; s. C., 1 Smith's L. C., pt. 2, p. 934.) Viewing the subject before us from the standpoint indicated, we hold that the order was void."

It is, therefore, evident that the proclamation of General MacArthur of October 23, 1944, which declared that "all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void without legal effect in areas of the Philippines free of enemy occupation and control," has not invalidated the judicial acts and proceedings, which are not of a political complexion, of the courts of justice in the Philippines that were continued by the Philippine Executive Commission and the Republic of the Philippines during the Japanese military occupation, and that said judicial acts and proceedings were good and valid before and are now good and valid after the reoccupation or liberation of the Philippines by the American and Filipino forces.

3. The third and last question is whether or not the courts of the Commonwealth, which are the same as those existing prior to, and continued during, the Japanese military occupation by the Philippine Executive Commission and by the so-called Republic of the Philippines, have jurisdiction to continue now the proceedings in actions pending in said courts at the time the Philippine Islands were reoccupied or liberated by the American and Filipino forces, and the Commonwealth Government was restored.

Although in theory the authority of the local civil and judicial administration is suspended as a matter of course as soon as military occupation takes place, in practice the invader does not usually take the administration of justice into his own hands, but continues the ordinary courts or tribunals to administer the laws of the country which he is enjoined, unless absolutely prevented, to respect. As stated in the above-quoted Executive Order of President McKinley to the Secretary of War on May 19, 1898, "in practice, they (the municipal laws) are not usually abrogated but are allowed to remain in force and to be administered by the ordinary tribunals substantially as they were before the occupation. This enlightened practice is, so far as possible, to be adhered to on the present occasion." And Taylor in this connection says: "From a theoretical point of view it may be said that the conqueror is armed with the right to substitute his arbitrary will for all pre-existing forms of government, legislative, executive and judicial. From the stand-point of actual practice such arbitrary will is restrained by the provision of the law of nations which compels the conqueror to continue local laws and institutions so far as military necessity will permit." (Taylor, International Public Law, p. 596.) Undoubtedly, this practice has been adopted in order that the ordinary pursuits and business of society may not be unnecessarily deranged, inasmuch as belligerent occupation is essentially provisional, and the government established by the occupant of transient character.

Following these practice and precepts of the law of nations, the Commander in Chief of the Japanese Forces proclaimed on January 3, 1942, when Manila was occupied, the military administration under martial law over the territory occupied by the army, and ordered that "all the laws now in force in the Commonwealth, as well as executive and judicial institutions, shall continue to be effective for the time being as in the past," and "all public officials shall remain in their present posts and carry on faithfully their duties as before." When the Philippine Executive Commission was organized by Order No. 1 of the Japanese Commander in Chief, on January 23, 1942, the Chairman of the Executive Commission, by Executive Orders Nos. 1 and 4 of January 30 and February 5, respectively, continued the Supreme Court, Court of Appeals, Court of First Instance, and justices of the peace courts, with the same jurisdiction, in conformity with the instructions given by the Commander in Chief of the Imperial Japanese Army in Order No. 3 of February 20, 1942. And on October 14, 1943 when the so-called Republic of the Philippines was inaugurated, the same courts were continued with no substantial change in the organization and jurisdiction thereof.

If the proceedings pending in the different courts of the Islands prior to the Japanese military occupation had been

continued during the Japanese military administration, the Philippine Executive Commission, and the so-called Republic of the Philippines, it stands to reason that the same courts, which have become reestablished and conceived of as having been in continued existence upon the reoccupation and liberation of the Philippines by virtue of the principle of postliminy (Hall, *International Law*, 7th ed., p. 516), may continue the proceedings in cases then pending in said courts, without necessity of enacting a law conferring jurisdiction upon them to continue said proceedings. As Taylor graphically points out in speaking of said principle "a state or other governmental entity, upon the removal of a foreign military force, resumes its old place with its right and duties substantially unimpaired * * *. Such political resurrection is the result of a law analogous to that which enables elastic bodies to regain their original shape upon the removal of the external force,—and subject to the same exception in case of absolute crushing of the whole fibre and content." (Taylor, *International Public Law*, p. 615.)

The argument advanced by the respondent judge in his resolution in support of his conclusion that the Court of First Instance of Manila presided over by him "has no authority to take cognizance of, and continue said proceedings (of this case) to final judgment until and unless the Government of the Commonwealth of the Philippines * * * shall have provided for the transfer of the jurisdiction of the courts of the now defunct Republic of the Philippines, and the cases commenced and left pending therein," is "that said courts were of a government alien to the Commonwealth Government. The laws they enforced were, true enough, laws of the Commonwealth prior to Japanese occupation, but they had become the laws—and the courts had become the institutions—of Japan by adoption (U. S. vs. Reiter, 27 F. Cases, No. 16146), as they became later on the laws and institutions of the Philippine Executive Commission and the Republic of the Philippines."

The court in the said case of U. S. vs. Reiter did not and could not say that the laws and institutions of the country occupied, if continued by the conqueror or occupant, become the laws and the courts, by adoption, of the sovereign nation that is militarily occupying the territory. Because, as already shown, belligerent or military occupation is essentially provisional and does not serve to transfer the sovereignty over the occupied territory to the occupant. What the court said was that, if such laws and institutions are continued in use by the occupant, they become his and derive their force from him, in the sense that he may continue or set them aside. The laws and institutions or courts so continued remain the laws and institutions or courts of the occupied territory. The laws and courts of the Philippines, therefore, did not become, by being continued as¹ required by the law of nations, laws and courts of Japan. The provision of Article 45, section III, of the Hague Conventions of 1907 which prohibits any compulsion of the population of occupied territory to swear allegiance to the hostile power, "extends to prohibit everything which would assert or imply a change made by the invader in the legitimate sovereignty. This duty is neither to innovate in the political- life of the occupied districts, nor needlessly to break the continuity of their legal life. Hence, so far as the courts of justice are allowed to continue administering the territorial laws, they must be allowed to give their sentences in the name of the legitimate sovereign" (Westlake, *Int. Law*, Part II, second ed., p. 102). According to Wheaton, however, the victor need not allow the use of that of the legitimate government. When in 1870, the Germans in France attempted to violate that rule by ordering, after the fall of the Emperor Napoleon, the courts of Nancy to administer justice in the name of the "High German Powers occupying Alsace and Lorraine," upon the ground that the exercise of their powers in the name of the French people and government was at least an implied recognition of the Republic, the courts refused to obey and suspended their sitting. Germany originally ordered the use of the name of "High German Powers occupying Alsace and Lorraine," but later offered to allow the use of the name of the Emperor or a compromise. (Wheaton, *International Law*, War, 7th English ed. 1944, p. 244.)

Furthermore, it is a legal maxim, that excepting that of a political nature, "Law once established continues until changed by some competent legislative power. It is not changed merely by change of sovereignty." (Joseph H. Beale, *Cases on Conflict of Laws*, III, Summary Section 9, citing *Commonwealth vs. Chapman*, 13 Met., 68.) As

the same author says, in his *Treatise on the Conflict of Laws* (Cambridge, 1916, Section 131): "There can be no break or interregnum in law. From the time the law comes into existence with the first-felt corporateness of a primitive people it must last until the final disappearance of human society. Once created, it persists until a change takes place, and when changed it continues in such changed condition until the next change, and so forever. Conquest or colonization is impotent to bring law to an end; in spite of change of constitution, the law continues unchanged until the new sovereign by legislative act creates a change."

As courts are creatures of statutes and their existence depends upon that of the laws which create and confer upon them their jurisdiction, it is evident that such laws, not being of a political nature, are not abrogated by a change of sovereignty, and continue in force "ex proprio vigore" unless and until repealed by legislative acts. A proclamation that said laws and courts are expressly continued is not necessary in order that they may continue in force. Such proclamation, if made, is but a declaration of the intention of respecting and not repealing those laws. Therefore, even assuming that Japan had legally acquired sovereignty over these Islands, which she had afterwards transferred to the so-called Republic of the Philippines, and that the laws and the courts of these Islands had become the courts of Japan, as the said courts and the laws creating and conferring jurisdiction upon them have continued in force until now, it necessarily follows that the same courts may continue exercising the same jurisdiction over cases pending therein before the restoration of the Commonwealth Government, unless and until they are abolished or the laws creating and conferring jurisdiction upon them are repealed by the said government.

As a consequence, enabling laws or acts providing that proceedings pending in one court be continued by or transferred to another court, are not required by the mere change of government or sovereignty. They are necessary only in case the former courts are abolished or their jurisdiction so changed that they can no longer continue taking cognizance of the cases and proceedings commenced therein, in order that the new courts or the courts having jurisdiction over said cases may continue the proceedings. When the Spanish sovereignty in the Philippine Islands ceased and the Islands came into the possession of the United States, the "Audiencia" or Supreme Court was continued and did not cease to exist, and proceeded to take cognizance of the actions pending therein upon the cessation of the Spanish sovereignty until the said "Audiencia" or Supreme Court was abolished, and the Supreme Court created in Chapter II of Act No. 136 was substituted in lieu thereof. And the Courts of First Instance of the Islands during the Spanish regime continued taking cognizance of cases pending therein upon the change of sovereignty, until section 65 of the same Act No. 136 abolished them and created in its Chapter IV the present Courts of First Instance in substitution of the former. Similarly, no enabling acts were enacted during the Japanese occupation, but a mere proclamation or order that the courts in the Islands were continued.

On the other hand, during the American regime, when section 78 of Act No. 136 was enacted abolishing the civil jurisdiction of the provost courts created by the military government of occupation in the Philippines during the Spanish-American War of 1898, the same section 78 provided for the transfer of all civil actions then pending in the said provost courts to the proper tribunals, that is, to the justices of the peace courts, Court of First Instance, or Supreme Court having jurisdiction over them according to law. And later on, when the criminal jurisdiction of provost courts in the City of Manila was abolished by section 3 of Act No. 186, the same section provided that criminal cases pending therein within the jurisdiction of the municipal courts created by Act No. 183 were transferred to the latter.

That the present courts are the same courts which had been functioning during the Japanese regime and, therefore, can continue the proceedings in cases pending therein prior to the restoration of the Commonwealth of the Philippines, is confirmed by Executive Order No. 37 which we have already quoted in support of our conclusion in connection with the second question. Said Executive Order provides "(1) that the Court of Appeals, created and

established under Commonwealth Act No. 3, as amended, be abolished, as it is hereby abolished,” and “(2) that all cases which have heretofore been duly appealed to the Court of Appeals shall be transmitted to the Supreme Court for final decision. * * *” In so providing, the said Order considers that the Court of Appeals abolished was the same that existed prior to, and continued after, the restoration of the Commonwealth Government; for, as we have stated in discussing the previous question, almost all, if not all, of the cases pending therein, or which had theretofore (that is, up to March 10, 1945) been duly appealed to said court, must have been cases coming from the Courts of First Instance during the so-called Republic of the Philippines. If the Court of Appeals abolished by the said Executive Order was not the same one which had been functioning during the Republic, but that which had existed up to the time of the Japanese occupation, it would have provided that all the cases which had, prior to and up to that occupation on January 2, 1942, been duly appealed to the said Court of Appeals shall be transmitted to the Supreme Court for final decision.

It is, therefore, obvious that the present courts have jurisdiction to continue, to final judgment, the proceedings in cases, not of political complexion, pending therein at the time of the restoration of the Commonwealth Government.

Having arrived at the above conclusions, it follows that the Court of First Instance of Manila has jurisdiction to continue to final judgment the proceedings in civil case No. 3012, which involves civil rights of the parties under the laws of the Commonwealth Government, pending in said court at the time of the restoration of the said Government; and that the respondent judge of that court, having refused to act and continue the said proceedings, which the law specifically enjoins him to do as a duty resulting from his office as presiding judge of that court, mandamus is the speedy and adequate remedy in the ordinary course of law, especially taking into consideration the fact that the question of jurisdiction herein involved does affect not only this particular case, but many other cases now pending in all the courts of these Islands.

In view of all the foregoing, it is adjudged and decreed that a writ of mandamus issue, directed to the respondent judge of the Court of First Instance of Manila, ordering him to take cognizance of and continue to final judgment the proceedings in civil case No. 3012 of said court. No pronouncement as to costs. So ordered.

Moran, C. J., Ozaeta, Paras, Jaranilla, and Pablo, JJ., concur.

[1] Resolution on motion for reconsideration, see p. 371, post.

CONCURRING OPINION

DE JOYA, J.:

The principal question involved in this case is the validity of the proceedings held in civil case No. 3012, in the Court of First Instance of the City of Manila, under the now defunct Philippine Republic, during Japanese occupation; and the effect on said proceedings of the proclamation of General Douglas MacArthur, dated October 23, 1944. The decision of this question requires the application of principles of International Law, in connection with the municipal law in force in this country, before and during Japanese occupation.

Questions of International Law must be decided as matters of general law (*Juntington vs. Attril*, 146 U. S., 657; 13 Sup. Ct., 224; 36 Law. ed., 1123); and International Law is no alien in this Tribunal, as, under the Constitution of the Commonwealth of the Philippines, it is a part of the fundamental law of the land (Article II, section 3).

As International Law is an integral part of our laws, it must be ascertained and administered by this Court,

whenever questions of right depending upon it are presented for our determination, sitting as an international as well as a domestic Tribunal (*Kansas vs. Colorado*, 185 U. S., 146; 22 Sup. Ct., 552; 46 Law. Ed., 838).

Since International Law is a body of rules actually accepted by nations as regulating their mutual relations, the proof of the existence of a given rule is to be found in the consent of nations to abide by that rule; and this consent is evidenced chiefly by the usages and customs of nations, and to ascertain what these usages and customs are, the universal practice is to turn to the writings of publicists and to the decisions of the highest courts of the different countries of the world (*The Habana*, 175 U. S., 677; 20 Sup. Ct., 290; 44 Law. ed., 320).

But while usage is the older and original source of International Law, great international treaties are a later source of increasing importance, such as The Hague Conventions of 1899 and 1907.

The Hague Convention of 1899, respecting laws and customs of war on land, expressly declares that:

"Article XLII. Territory is considered occupied when it is actually placed under the authority of the hostile army.

"The occupation applies only to the territory where such authority is established, and in a position to assert itself.

"Article XLIII. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to reestablish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." (32 Stat. II, 1821.)

The above provisions of The Hague Convention have been adopted by the nations giving adherence to them, among which is the United States of America (32 Stat. II, 1821).

The commander in chief of the invading forces or military occupant may exercise governmental authority, but only when in actual possession of the enemy's territory, and this authority will be exercised upon principles of International Law (*New Orleans vs. Steamship Co.* [1874], 20 Wall., 387; *Kelly vs. Sanders* [1878], 99 U. S., 441; *MacLeod vs. U. S.*, 229 U. S., 416; 33 Sup. Ct., 955; 57 Law. ed., 1260; II *Oppenheim on International Law*, section 167).

There can be no question that the Philippines was under Japanese military occupation, from January, 1942, up to the time of the reconquest by the armed forces of the United States of the Island of Luzon, in February, 1945.

It will thus be readily seen that the civil laws of the invaded State continue in force, in so far as they do not affect the hostile occupant unfavorably. The regular judicial Tribunals of the occupied territory continue to act in cases not affecting the military occupation, and it is not usual for the invader to take the whole administration into his own hands, partly because it is easier to preserve order through the agency of the native officials, and partly because the latter are more competent to administer the laws in force within the territory and the military occupant generally keeps in their posts such of the judicial and administrative officers as are willing to serve under him, subjecting them only to supervision by the military authorities, or by superior civil authorities appointed by him. (*Young vs. U. S.*, 97 U. S., 39; 24 Law. ed., 992; *Coleman vs. Tennessee*, 97 U. S., 509; 24 Law. ed., 1118; *MacLeod vs. U. S.*, 229 U. S., 416; 33 Sup. Ct., 955; 57 Law. ed., 1260; *Taylor on International Law*, sections 576, 578; *Wilson on International Law*, pp. 331-37; *Hall on International Law*, 6th Edition [1909], pp. 464, 465, 475, 476; *Lawrence on International Law*, 7th ed., pp. 412, 413; *Davis, Elements of International Law*, 3d ed., pp. 330-332, 335; *Holland on International Law*, pp. 356, 357, 359; *Westlake on International Law*, 2d ed., pp. 121-23.)

It is, therefore, evident that the establishment of the government under the so-called Philippine Republic, during

Japanese occupation, respecting the laws in force in the country, and permitting the local courts to function and administer such laws, as proclaimed in the City of Manila, by the Commander in Chief of the Japanese Imperial Forces, on January 3, 1942, was in accordance with the rules and principles of International Law.

If the military occupant is thus in duty bound to establish in the territory under military occupation governmental agencies for the preservation of peace and order and for the proper administration of justice, in accordance with the laws in force within said territory, it must necessarily follow that the judicial proceedings conducted before the courts established by the military occupant must be considered legal and valid, even after said government established by the military occupant has been displaced by the legitimate government of the territory.

Thus the judgments rendered by the Confederate Courts, during the American Civil War, merely settling the rights of private parties actually within their jurisdiction, not tending to defeat the legal rights of citizens of the United States, nor in furtherance of laws passed in aid of the rebellion, had been declared valid and binding (*Cock vs. Oliver*, 1 Woods, 437; *Fed. Cas.*, No. 3, 164; *Coleman vs. Tennessee*, 97 U. S., 509; 24 Law. ed., 118; *Williams vs. Bruffy*, 96 U. S., 176; *Horn vs. Lockhart*, 17 Wall., 570; *Sprott vs. United States*, 20 id., 459; *Texas vs. White*, 7 id., 700; *Ketchum vs. Buckley* [1878], 99 U. S., 188); and the judgment of a court of Georgia rendered in November, 1861, for the purchase money of slaves was held valid judgment when entered, and enforceable in 1871 (*French vs. Tumlin*, 10 Am. Law. Reg. [N. S.], 641; *Fed. Case*, No. 5104).

Said judgments rendered by the courts of the states constituting the Confederate States of America were considered legal and valid and enforceable, even after the termination of the American Civil War, because they had been rendered by the courts of a de facto government. The Confederate States were a de facto government in the sense that its citizens were bound to render the government obedience in civil matters, and did not become responsible, as wrong-doers, for such acts of obedience (*Thorington vs. Smith*, 8 Wall. [U. S.], 9; 19 Law. ed., 361).

In the case of *Ketchum vs. Buckley* ([1878], 99 U. S., 188), the Court held—"It is now settled law in this court that during the late civil war the same general form of government, the same general law for the administration of justice and the protection of private rights, which had existed in the States prior to the rebellion, remained during its continuance and afterwards. As far as the acts of the States did not impair or tend to impair the supremacy of the national authority, or the just and legal rights of the citizens, under the Constitution, they are in general to be treated as valid and binding." (*Williams vs. Bruffy*, 96 U. S., 176; *Horn vs. Lockhart*, 17 Wall., 570; *Sprott vs. United States*, 20 id., 459; *Texas vs. White*, 7 id., 700.)

The government established in the Philippines, during Japanese occupation, would seem to fall under the following definition of de facto government given by the Supreme Court of the United States:

"But there is another description of government, called also by publicists, a government de facto, but which mighty perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1) that its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful government; and (2) that while it exists it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrong doers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less directly by military force." (*Macleod vs. United States* [1913], 229 U. S., 416.)

The government established in the Philippines, under the so-called Philippine Republic, during Japanese occupation, was and should be considered as a de facto government; and that the judicial proceedings conducted

before the courts which had been established in this country, during said Japanese occupation, are to be considered legal and valid and enforceable, even after the liberation of this country by the American forces, as long as the said judicial proceedings had been conducted, under the laws of the Commonwealth of the Philippines.

The judicial proceedings involved in the case under consideration merely refer to the settlement of property rights, under the provisions of the Civil Code, in force in this country under the Commonwealth government, before and during Japanese occupation.

Now, petitioner contends that the judicial proceedings in question are null and void, under the provisions of the proclamation issued by General Douglas MacArthur, dated October 23, 1944; as said proclamation "nullifies all the laws, regulations and processes of any other government in the Philippines than that of the Commonwealth of the Philippines."

In other words, petitioner demands a literal interpretation of said proclamation issued by General Douglas MacArthur, a contention which, in our opinion, is untenable, as it would inevitably produce judicial chaos and uncertainties.

When an act is susceptible of two or more constructions, one of which will maintain and the others destroy it, the courts will always adopt the former (U. S. vs. Coombs [1838], 12 Pet., 72; 9 Law. ed., 1004; Board of Supervisors of Granada County vs. Brown [1884], 112 U. S., 261; 28 Law. ed., 704; 5 Sup. Ct. Rep., 125; In re Guariña [1913], 24 Phil., 37; Fuentes vs. Director of Prisons [1924], 46 Phil., 22; Yu Cong Eng vs. Trinidad [1925], 47 Phil., 385). The judiciary, always alive to the dictates of national welfare, can properly incline the scales of its decisions in favor of that solution which will most effectively promote the public policy (Smith, Bell & Co., Ltd. vs. Natividad [1919], 40 Phil., 136). All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter (U. S. vs. Kirby, 7 Wall. [U. S.], 482; 19 Law. ed., 278; Church of Holy Trinity vs. U. S., 143 U. S. 461; 12 Sup. Ct., 511; 36 Law. ed., 226; Jacobson vs. Massachusetts, 197 U. S., 39; 25 Sup. Ct., 358; 49 Law. ed., 643; 3 Ann. Cas., 765; In re Allen, 2 Phil., 630). The duty of the court in construing a statute, which is reasonably susceptible of two constructions to adopt that which saves its constitutionality, includes the duty of avoiding a construction which raises grave and doubtful constitutional questions, if it can be avoided (U. S. vs. Delaware & Hudson Co., 213 U. S., 366; 29 Sup. Ct., 527; 53 Law. ed., 836).

According to the rules and principles of International Law, and the legal doctrines cited above, the judicial proceedings conducted before the courts of justice, established here during Japanese military occupation, merely applying the municipal law of the territory, such as the provisions of our Civil Code, which have no political or military significance, should be considered legal, valid and binding.

It is to be presumed that General Douglas MacArthur is familiar with said rules and principles, as International Law is an integral part of the fundamental law of the land, in accordance with the provisions of the Constitution of the United States. And it is also to be presumed that General MacArthur has acted, in accordance with said rules and principles of International Law, which have been sanctioned by the Supreme Court of the United States, as the nullification of all judicial proceedings conducted before our courts, during Japanese occupation would lead to injustice and absurd results, and would be highly detrimental to public interests.

For the foregoing reasons, I concur in the majority opinion.

DISSENTING OPINION

PERFECTO, J.:

Law must be obeyed. To keep the bonds of society, it must not be evaded. On its supremacy depends the stability of states and nations. No government can prevail without it. The preservation of the human race itself hinges on law.

Since time immemorial, man has relied on law as an essential means of attaining his purposes, his objectives, his mission in life. More than twenty-two centuries before the Christian Era, on orders of the Assyrian King Hammurabi, the first known code was engraved in black diorite with cuneiform characters. Nine centuries later Emperor Hung Wu, in the cradle of the most ancient civilization, compiled the Code of the Great Ming. The laws of Manu were written in the vedic India. Moses received at Sinai the ten commandments. Draco, Lycurgus, Solon made laws in Greece. Even ruthless Genghis Khan used laws to keep discipline among the nomad hordes with which he conquered the greater part of the European and Asiatic continents.

Animal and plant species must follow the mendelian heredity rules and other biological laws to survive. Thanks to them, the chalk cliffs of the infusoria show the marvel of an animal so tiny as to be imperceptible to the naked eye creating a whole mountain. Even the inorganic world has to conform to law. Planets and stars follow the laws discovered by Kepler, known as the law-maker of heavens. If, endowed with rebellious spirit, they should happen to challenge the law of universal gravity, the immediate result would be cosmic chaos. The tiny and twinkling points of light set above us on the velvet darkness of the night will cease to inspire us with dreams of more beautiful and happier worlds.

Again we are called upon to do our duty. Here is a law that we must apply. Shall we shrink? Shall we circumvent it? Can we ignore it?

The laws enacted by the legislators shall be useless if courts are not ready to apply them. It is actual application to real issues which gives laws the breath of life.

In the varied and confused market of human endeavour there are so many things that might induce us to forget the elementals. There are so many events, so many problems, so many preoccupations that are pushing among themselves to attract our attention, and we might miss the nearest and most familiar things, like the man who went around his house to look for a pencil perched on one of his ears.

THE OCTOBER PROCLAMATION

In October, 1944, the American Armed Forces of Liberation landed successfully in Leyte.

When victory in the island was accomplished, after the most amazing and spectacular war operations, General of the Army Douglas MacArthur, as Commander in Chief of the American Army, decided to reestablish, in behalf of the United States, the Commonwealth Government.

Then he was confronted with the question as to what policy to adopt in regards to the official acts of the governments established in the Philippines by the Japanese regime. He might have thought of recognizing the validity of some of said acts, but, certainly, there were acts which he should declare null and void, whether against the policies of the American Government, whether inconsistent with military strategy and operations, whether detrimental to the interests of the American or Filipino peoples, whether for any other strong or valid reasons.

But, which to recognize, and which not? He was not in a position to gather enough information for a safe basis to distinguished and classify which acts must be nullified, and which must be validated. At the same time he had to take immediate action. More pressing military matters were requiring his immediate attention. He followed the

safer course: to nullify all the legislative, executive, and judicial acts and processes under the Japanese regime. After all, when the Commonwealth Government is already functioning, with proper information, he will be in a position to declare by law, through its Congress, which acts and processes must be revived and validated in the public interest.

So on October 23, 1944, the Commander in Chief issued the following proclamation:

"GENERAL HEADQUARTERS
"SOUTHWEST PACIFIC AREA
"OFFICE OF THE COMMANDER IN CHIEF

"PROCLAMATION

"To the People of the Philippines:

"Whereas, the military forces under my command have landed in Philippine soil as a prelude to the liberation of the entire territory of the Philippines; and

"Whereas, the seat of the Government of the Commonwealth of the Philippines has been re-established in the Philippines under President Sergio Osmeña and the members of his cabinet; and

"Whereas, under enemy duress, a so-called government styled as the 'Republic of the Philippines' was established on October 14, 1943, based upon neither the free expression of the people's will nor the sanction of the Government of the United States, and is purporting to exercise Executive, Judicial and Legislative powers of government over the people;

"Now, therefore, I, Douglas MacArthur, General, United States Army, as Commander in Chief of the military forces committed to the liberation of the Philippines, do hereby proclaim and declare:

"1. That the Government of the Commonwealth of the Philippines is, subject to the supreme authority of the Government of the United States, the sole and only government having legal and valid jurisdiction over the people in areas, of the Philippines free of enemy occupation and control;

"2. That the laws now existing on the statute books of the Commonwealth of the Philippines and the regulations promulgated pursuant thereto are in full force and effect and legally binding upon the people in areas of the Philippines free of enemy occupation and control; and

"3. That all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control; and

"I do hereby announce my purpose progressively to restore and extend to the people of the Philippines the sacred right of government by constitutional process under the regularly constituted Commonwealth Government as rapidly as the several occupied areas are liberated and the military situation will otherwise permit;

"I do enjoin upon all loyal citizens of the Philippines full respect for and obedience to the Constitution of the Commonwealth of the Philippines and the laws, regulations and other acts of their duly constituted government whose seat is now firmly re-established on Philippine soil.

"October 23, 1944.

"Douglas MacArthur
"General, U. S. Army
"Commander in Chief"

IS THE OCTOBER PROCLAMATION A LAW?

In times of war the Commander in Chief of an army is vested with extraordinary inherent powers, as a natural result of the nature of the military operations aimed to achieve the purposes of his country in the war, victory being paramount among them.

Said Commander in Chief may establish in the occupied or reoccupied territory, under his control, a complete system of government; he may appoint officers and employees to manage the affairs of said government; he may issue proclamations, instructions, orders, all with the full force of laws enacted by a duly constituted legislature; he may set the policies that should be followed by the public administration organized by him; he may abolish the said agencies. In fact, he is the supreme ruler and law-maker of the territory under his control, with powers limited only by the receipts of the fundamental laws of his country.

"California, or the port of San Francisco, had been conquered by the arms of the United States as early as 1846. Shortly afterward the United States had military possession of all upper California. Early in 1847 the President, as constitutional commander in chief of the army and navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for the support of the government, and of the army which has the conquest in possession * * *" (Cross vs. Harrison, 16 Howard, 164, 189.)

"In May, 1862, after the capture of New Orleans by the United States Army, General Butler, then in command of the army at that place, issued a general order appointing Major J. M. Bell, volunteer aide-de-camp, of the division staff, provost judge of the city, and directed that he should be obeyed and respected accordingly. The same order appointed Capt. J. H. French provost marshal of the city, and Capt. Stafford deputy provost marshal. A few days after this order the Union Bank lent to the plaintiffs the sum of \$130,000, and subsequently, the loan not having been repaid, brought suit before the provost judge to recover the debt. The defense was taken that the judge had no jurisdiction over the civil cases, but judgment was given against the borrowers, and they paid the money under protest. To recover it back is the object of the present suit, and the contention of the plaintiffs is that the judgment was illegal and void, because the Provost Court had no jurisdiction of the case. The judgment of the District Court was against the plaintiffs, and this judgement was affirmed by the Supreme Court of the State. To this affirmance error is now assigned.

"The argument of the plaintiffs in error is that the establishment of the Provost Court, the appointment of the judge, and his action as such in the case brought by the Union Bank against them were invalid, because in violation of the Constitution of the United States, which vests the judicial power of the General government in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish, and that under this constitutional provision they were entitled to immunity from any liability imposed by the judgment of the Provost Court. Thus, it is claimed, a Federal question is presented, and the highest court of the State having decided against the immunity claimed, our jurisdiction is invoked.

"Assuming that the case is thus brought within our right to review it, the controlling question is whether the commanding general of the army which captured New Orleans and held it in May 1862, had authority after the capture of the city to establish a court and appoint a judge with power to try and adjudicate civil causes. Did the Constitution of the United States prevent the creation of civil courts in captured districts during the war of the rebellion, and their creation by military authority?

"This cannot be said to be an open question. The subject came under consideration by this court in *The Grapeshot*, where it was, decided that when, during the late civil war, portions of the insurgent territory were occupied by the National forces, it was within the constitutional authority of the President, as commander in chief, to establish therein provisional courts for the hearing and determination of all causes arising under the laws of the States or of the United States, and it was ruled that a court instituted by President Lincoln for the

State of Louisiana, with authority to hear, try, and determine civil causes, was lawfully authorized to exercise such jurisdiction. Its establishment by military authority was held to be no violation of the constitutional provision that 'the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.' That clause of the Constitution has no application to the abnormal condition of conquered territory in the occupancy of the conquering army. It refers only to courts of the United States, which military courts are not. As was said in the opinion of the court, delivered by Chief Justice Chase, in *The Grapeshot*, 'It became the duty of the National government, wherever the insurgent power was overthrown, and the territory which had been dominated by it was occupied by the National forces, to provide, as far as possible, so long as the war continued, for the security of persons and property and for the administration of justice. The duty of the National government in this respect was no other than that which devolves upon a regular belligerent, occupying during war the territory of another belligerent. It was a military duty, to be performed by the President, as Commander in Chief, and intrusted as such with the direction of the military force by which the occupation was held.'

"Thus it has been determined that the power to establish by military authority courts for the administration of civil as well as criminal justice in portions of the insurgent States occupied by the National forces, is precisely the same as that which exists when foreign territory has been conquered and is occupied by the conquerors. What that power is has several times been considered. In *Leitensdorfer & Houghton vs. Webb*, may be found a notable illustration. Upon the conquest of New Mexico, in 1846, the commanding officer of the conquering army, in virtue of the power of conquest and occupancy and with the sanction and authority of the President, ordained a provisional government for the country. The ordinance created courts with both civil and criminal jurisdiction. It did not undertake to change the municipal laws of the territory, but it established a judicial system with a superior or appellate court, and with circuit courts the jurisdiction of which was declared to embrace, first, all criminal causes that should not otherwise be provided for by law; and secondly, original and exclusive cognizance of all civil cases not cognizable before the prefects and alcaldes. But though these courts and this judicial system were established by the military authority of the United States, without any legislation of Congress, this court ruled that they were lawfully established. And there was no express order for their establishment emanating from the President or the Commander in Chief. The ordinance was the act of General Kearney, the commanding officer of the army occupying the conquered territory.

"In view of these decisions it is not to be questioned that the Constitution did not prohibit the creation by military authority of courts for the trial of civil causes during the civil war in conquered portions of the insurgent States. The establishment of such courts is but the exercise of the ordinary rights of conquest. The plaintiffs in error, therefore, had no constitutional immunity against subjection to the judgments of such courts. They argue, however, that if this be conceded, still General Butler had no authority to establish such a court; that the President alone, as Commander in Chief, had such authority. We do not concur in this view. General Butler was in command of the conquering and occupying army. He was commissioned to carry on the war in Louisiana. He was, therefore, invested with all the powers of making war, except so far as they were denied to him by the Commander in Chief, and among these powers, as we have seen, was that of establishing courts in conquered territory. It must be presumed that he acted under the orders of his superior officer, the President, and that his acts, in the prosecution of the war, were the acts of his commander in chief." (*Mechanics' etc. Bank vs. Union Bank*, 89 U. S. [22 Wall.], 276-298.)

There is no question, therefore, that when General of the Army Douglas MacArthur issued the October Proclamation, he did it in the legitimate exercise of his powers. He did it as the official representative of the supreme authority of the United States of America. Consequently, said proclamation is legal, valid, and binding.

Said proclamation has the full force of a law. In fact, of a paramount law. Having been issued in the exercise of the American sovereignty, in case of conflict, it can even supersede, not only the ordinary laws of the Commonwealth of the Philippines, but also our Constitution itself while we remain under the American flag.

"PROCESSES" IN THE OCTOBER PROCLAMATION

In the third section of the dispositive part of the October Proclamation, it is declared that all laws, regulations, and processes of any other government in the Philippines than that of the Commonwealth, are null and void.

Does the word "processes" used in the proclamation include judicial processes?

In its broadest sense, process is synonymous with proceedings or procedures and embraces all the steps and proceedings in a judicial cause from its commencement to its conclusion.

"PROCESS. In Practice.—The means of compelling a defendant to appear in court after suing out the original writ, in civil, and after indictment, in criminal cases.

"The method taken by law to compel a compliance with the original writ or command as of the court.

"A writ, warrant, subpoena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings; *Gollobitch vs. Rainbow*, 84 Ia., 567; 51 N. W., 48; the means or method pointed out by a statute, or used to acquire jurisdiction of the defendants, whether by writ or notice. *Wilson vs. R. Co.* (108 Mo., 588; 18 S. W., 286; 32 Am. St. Rep., 624)." (8 *Bouvier's Law Dictionary*, p. 2731.)

"A. Process generally. 1. Definition.—As a legal term, process is a generic word of very comprehensive signification and many meanings. In its broadest sense it is equivalent to, or synonymous with, 'proceedings' or 'procedure,' and embraces all the steps and proceedings in a cause from its commencement to its conclusion. Sometimes the term is also broadly denned as the means whereby a court compels a compliance with its demands. 'Process' and 'writ' or 'writs' are synonymous in the sense that every writ is a process, and in a narrow sense of the term 'process' is limited to judicial writs in an action, or at least to writs or writings issued from or out of a court, under the seal thereof, and returnable thereto; but it is not always necessary to construe the term so strictly as to limit it to a writ issued by a court in the exercise of its ordinary jurisdiction; the term is sometimes defined as a writ or other formal writing issued by authority of law or by some court, body, or official having authority to issue it; and it is frequently used to designate a means, by writ or otherwise, of acquiring jurisdiction of defendant or his property, or of bringing defendant into, or compelling him to appear in, court to answer.

"As employed in statutes the legal meaning of the word 'process' varies according to the context, subject matter, and spirit of the statute in which it occurs. In some jurisdictions codes or statutes variously define 'process' as signifying or including: A writ or summons issued in the course of judicial proceedings; all writs, warrants, summonses, and orders of courts of justice or judicial officers; or any writ, declaration, summons, order, or subpoena whereby any action, suit, or proceeding¹ shall be commenced, or which shall be issued in or upon any action, suit or proceeding. (50 C. J., pp. 441, 442.)

"The definition of 'process' given by Lord Coke comprehends any lawful warrant, authority, or proceeding by which a man may be arrested. He says: 'Process of law is twofold, namely, by the King's writ, or by due proceeding and warrant, either in deed or in law, without writ' (*People vs. Nevins* [N. Y.], 1 Hill, 154, 169, 170; *State vs. Shaw*, 50 A., 863, 869; 73 Vt., 149.)

"Baron Comyn says that process, in a large acceptance, comprehends the whole proceedings after the original and before judgment; but generally it imports the writs which issue out of any court to bring the party to answer, or for doing execution, and all process out of the King's courts ought to be in the name of the King. It is called 'process' because it proceeds or goes out upon former matter, either original or judicial. *Gilmer vs. Bird*, 15 Fla., 410, 421." (34 *Words and Phrases*, permanent edition, 1940 edition, p. 147.)

"In a broad sense the word 'process' includes the means whereby a court compels the appearance of the defendant before it, or a compliance with its demands, and any and every writ, rule, order, notice, or decree,

including any process of execution that may issue in or upon any action, suit, or legal proceedings, and is not restricted to mesne process. In a narrow or restricted sense it means those mandates of the court intending to bring parties into court or to require them to answer proceedings there pending. *Colquitt Nat. Bank vs. Poitvint*, 83 S. E., 198, 199; 15 Ga. App., 329." (34 Words and Phrases, permanent edition, 1940 edition, p. 148.)

"A 'process' is an instrument in an epistolary form running in the name of the sovereign of a state and issued out of a court of justice, or by a judge thereof, at the commencement of an action or at any time during its progress or incident thereto, usually under seal of the court, duly attested and directed to some municipal officer or to the party to be bound by it, commanding the, commission of some act at or within a specified time, or prohibiting the doing of some act. The cardinal requisites are that the instrument issue from a court of justice, or a judge thereof; that it run in the name of the sovereign of the state; that it be duly attested, but not necessarily by the judge, though usually, but not always, under seal; and that it be directed to some one commanding or prohibiting the commission of an act. *Watson vs. Keystone Ironworks Co.*, 74 P., 272, 273; 70 Kan., 43." (34 Words and Phrases, permanent edition, 1940 edition, p. 148.)

"Jacobs in his Law Dictionary says: 'Process' has two qualifications: First, it is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end; secondly, that is termed the 'process' by which a man is called into any temporal court, because the beginning or principal part thereof, by which the rest is directed or taken. Strictly, it is the proceeding after the original, before judgment. A policy of fire insurance contained the condition that if the property shall be sold or transferred, or any change takes place in the title or possession, whether by legal process or judicial decree or voluntary transfer or convenience, then and in every such case the policy shall be void. The term 'legal process,' as used in the policy, means what is known as a writ; and, as attachment or execution on the writs are usually employed to effect a change of title to property, they are or are amongst the processes contemplated by the policy. The words 'legal process' mean all the proceedings in an action or proceeding. They would necessarily embrace the decree, which ordinarily includes the proceedings. *Perry vs. Lorillard Fire Ins. Co.*, N.Y., 6 Lans., 201, 204. See, also, *Tipton vs. Cordova*, 1 N. M., 383, 385." (34 Words and Phrases, permanent edition, 1940 edition, p. 148.)

"'Process' in a large acceptation, is nearly synonymous with 'proceedings,' and means the entire proceedings in an action, from the beginning to the end. In a stricter sense, it is applied to the several judicial writs issued in an action. *Hanna vs. Russell*, 12 Minn., 80, 86 (Gil., 43, 45)." (34 Words and Phrases, permanent edition, 1940 edition, 149.)

"The term 'process' as commonly applied, intends that proceeding by which a party is called into court, but it has a more enlarged signification, and covers all the proceedings in a court, from the beginning to the end of the suit; and, in this view, all proceedings which may be had to bring testimony into court, whether viva voce or in writing, may be considered the process of the court. *Rich vs. Trimble*, Vt., 2 Tyler, 349, 350." Id.

"'Process' in its broadest sense comprehends all proceedings to the accomplishment of an end, including judicial proceedings. Frequently its signification is limited to the means of bringing a party into court. In the Constitution process which at the common law would have run in the name of the king is intended. In the Code process issued from a court is meant. *McKenna vs. Cooper*, 101 P., 662, 663; 79 Kan., 847, quoting *Hanna vs. Russel*, 12 Minn., 80. (Gil., 43); *Black Com.* 279; *Bouv. Law Diet.*" (34 Words and Phrases, permanent edition, 1940 edition, p. 149.)

"'Judicial process' includes the mandate of a court to its officers, and a means whereby courts compel the appearance of parties, or compliance with its commands, and includes a summons. *Ex parte Hill*, 51 So., 786, 787; 165 Ala., 365.

"'Judicial process' comprehends all the acts of the court from the beginning of the proceeding to its end, and in a narrower sense is the means of compelling a defendant to appear in court after suing out the original writ in

civil cases and after the indictment in criminal cases, and in every sense is the act of the court and includes any means of acquiring jurisdiction and includes attachment, garnishment, or execution, and also a writ. *Blair vs. Maxbass Security Bank of Maxbass*, 176 N. W., 98, 199; 44 N. D. 12." (23 Words and Phrases, permanent edition, 1940 edition, p. 328.)

There is no question that the word process, as used in the October Proclamation, includes all judicial processes or proceedings.

The intention of the author of the proclamation of including judicial processes appears clearly in the preamble of the document.

The second "Whereas," states that a so-called government styled as the "Republic of the Philippines," based upon neither the free expression of the people's will nor the sanction of the Government of the United States, and is "purporting to exercise Executive, Judicial, and Legislative powers of government over the people."

It is evident from the above-mentioned words that it was the purpose of General MacArthur to declare null and void all acts of government under the Japanese regime, and he used, in section 3 of the dispositive part, the word laws, as pertaining to the legislative branch, the word regulations, as pertaining to the executive branch, and lastly, the word processes, as pertaining to the judicial branch of the government which functioned under the Japanese regime.

It is reasonable to assume that he might include in the word "processes," besides those of judicial character, those of executive or administrative character. At any rate, judicial processes cannot be excluded.

THE WORDS OF THE PROCLAMATION EXPRESS UNMISTAKABLY THE INTENTION OF THE AUTHOR

The October Proclamation is written in such a way that it is impossible to make a mistake as to the intention of its author.

Oliver Wendell Holmes, perhaps the wisest man who had ever sat in the Supreme Court of the United States, stated the following:

"When the words in their literal sense have a plain meaning, courts must be very cautious in allowing their imagination to give them a different one." *Guild vs. Walter*, 182 Mass., 225, 226 (1902).

Upon questions of construction when arbitrary rule is involved, it is always more important to consider the words and the circumstances than even strong analogies in earlier decisions. The successive neglect of a series of small distinctions, in the effort to follow precedent, is very liable to end in perverting instruments from their plain meaning. In no other branch of the law (trusts) is so much discretion required in dealing with authority. * * * There is a strong presumption in favor of giving them words their natural meaning, and against reading them as if they said something else, which they are not fitted to express." *Merrill vs. Preston*, 135 Mass., 451, 455 (1883).

When the words of an instrument are free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the framer, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what needs no interpretation.

Very strong expressions have been used by the courts to emphasize the principle that they are to derive their knowledge of the legislative intention from the words or language of the statute itself which the legislature has used to express it. The language of a statute is its most natural guide. We are not at liberty to imagine an intent and bind the letter to that intent.

The Supreme Court of the United States said: "The primary and general rule of statutory construction is that the intent of the law-maker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true that there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise where there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise should have specifically provided for will justify any judicial addition to the language of the statute," (United States vs. Goldenberg, 168 U. S., 95, 102, 103; 18 S. C. Rep., 3; 42 Law. ed., 394.)

That the Government of the Commonwealth of the Philippines shall be the sole and only government in our country; that our laws are in full force and effect and legally binding; that "all laws, regulations and processes of any other government are null and void and without legal effect", are provisions clearly, distinctly, unmistakably expressed in the October Proclamation, as to which there is no possibility of error, and there is absolutely no reason in trying to find different meanings of the plain words employed in the document.

As we have already seen, the annulled processes are precisely judicial processes, procedures and proceedings, including the one which is under our consideration.

THE OCTOBER PROCLAMATION ESTABLISHES A CLEAR POLICY

Although, as we have already stated, there is no possible mistakes as to the meaning of the words employed in the October Proclamation, and the text of the document expresses, in clear-cut sentences, the true purposes of its author, it might not be amiss to state here what was the policy intended to be established by said proclamation.

It is a matter of judicial knowledge that in the global war just ended on September 2, 1945, by the signatures on the document of unconditional surrender affixed by representatives of the Japanese government, the belligerents on both sides resorted to what we may call war weapons of psychological character.

So Japan, since its military forces occupied Manila, had waged an intensive campaign of propaganda, intended to destroy the faith of the Filipino people in America, to wipe out all manifestations of American or occidental civilization, to create interest in all things Japanese, which the imperial officers tried to present as the acme of oriental culture, and to arouse racial prejudice among oriental and occidentals, to induce the Filipinos to rally to the cause of Japan, which she tried to make us believe is the cause of the inhabitants of all East Asia.

It is, then, natural that General MacArthur should take counter-measures to neutralize or annul completely all vestiges of Japanese influence, specially those which might jeopardize in any way his military operations and his means of achieving the main objective of the campaign of liberation, that is, to restore in our country constitutional processes and the high ideals which constitute the very essence of democracy.

It was necessary to free, not only our territory, but also our spiritual patrimony. It was necessary, not only to restore to us the opportunity of enjoying the physical treasures which a beneficent Providence accumulated on this bountiful land, the true paradise in the western Pacific, but to restore the full play of our ideology, that wonderful admixture of sensible principles of human conduct, bequeathed to us by our Malayan ancestors, the moral principles of Christianity assimilated by our people from teachers of Spain, and the common-sense rules of the American democratic way of life.

It was necessary to free that ideology from any Japanese impurity.

Undoubtedly, the author of the proclamation thought that the laws, regulations, and processes of all the branches of the governments established under the Japanese régime, if allowed to continue and to have effect, might be a

means of keeping and spreading in our country the Japanese influence, with the same deadly effect as the mines planted by the retreating enemy.

The government offices and agencies which functioned during the Japanese occupation represented a sovereignty and ideology antagonistic to the sovereignty and ideology which MacArthur's forces sought to restore in our country.

Under Chapter I of the Japanese Constitution, it is, declared that Japan shall be reigned and governed by a line of Emperors unbroken for ages eternal (Article 1); that the Emperor is sacred and inviolable (Article 3); that he is the head of the Empire, combining in himself the rights of sovereignty (Article 4); that he exercises the legislative power (Article 5); that he gives sanction to laws, and orders to be promulgated and executed (Article 6); that he has the supreme command of the Army and Navy (Article 11); that he declares war, makes peace, and concludes treaties (Article 13).

There is no reason for allowing to remain any vestige of Japanese ideology, the ideology of a people which, as confessed in a book we have at our desk, written by a Japanese, insists in doing many things precisely in a way opposite to that followed by the rest of the world.

It is the ideology of a people which insists in adopting the policy of self-delusion; that believes that their Emperor is a direct descendant of gods and he himself is a god, and that the typhoon which occurred on August 14, 1281, which destroyed the fleet with which Kublai Khan tried to invade Japan was the divine wind of Ise; that defies the heinous crime of the ronin, the 47 assassins who, in order to avenge the death of their master Asano Naganori, on February 3, 1703, entered stealthily into the house of Yoshinaka Kiro and killed him treacherously.

It is an ideology which dignifies hara-kiri or seppuku, the most bloody and repugnant form of suicide, and on September 13, 1912, on the occasion of the funeral of Emperor Meiji, induced General Maresuke Nogi and his wife to practice the abhorrent "junshi", and example of which is offered to us in the following words of a historian :

"When the Emperor's brother Yamato Hiko, died in 2 B. C., we are told that, following the occasion, his attendants were assembled to form the hito-bashira (pillar-men) to gird the grave. They were buried alive in a circle up to the neck around the tomb and 'for several days they died not, but wept and wailed day and night. At last they died and rotted. Dogs and cows gathered and ate them.'" (Gowen, an Outline of History of Japan, p. 50.)

The practice shows that the Japanese are the spiritual descendants of the Sumerians, the ferocious inhabitants of Babylonia who, 3500 years B. C., appeared in history as the first human beings to honor their patesis by killing and entombing with him his widow, his ministers, and notable men and women of his kingdom, selected by the priests to partake of such abominable honor. (Brodeur, The Pageant of Civilization, pp. 62-66.)

General MacArthur sought to annul completely the official acts of the governments under the Japanese occupation, because they were done at the shadow of the Japanese dictatorship, the same which destroyed the independence of Korea, the "Empire of Morning Freshness"; they violated the territorial integrity of China, invaded Manchuria, and Initiated therein the deceitful system of puppet governments, by designating irresponsible Pu Yi as Emperor of Manchukuo; they violated the trusteeship granted by the Treaty of Versailles by usurping the mandated islands in the Pacific; they initiated what they call China Incident, without war declaration, and, therefore, in complete disregard of an elemental international duty; they attacked Pearl Harbor treacherously, and committed a long series of flagrant violations of international law that have logically bestowed on Japan the title of the bandit nation in the social world.

The conduct of the Japanese during the occupation shows a shocking anachronism of a modern world power which seems to be the re-incarnation of one of those primitive social types of pre-history, whose proper place must be found in an archeological collection. It represents a backward jump in the evolution of ethical and juridical concepts, a reversion that, more than a simple pathological state, represents a characteristic and well denned case of sociological teratology.

Since they entered the threshold of our capital, the Japanese had announced that for every one of them killed they would kill ten prominent Filipinos. They promised to respect our rights by submitting us to wholesale and indiscriminate slapping, tortures, and atrocious massacres. Driving nails in the cranium, extraction of teeth and eyes, burning of organs, hangings, diabolical zonings, looting of properties, establishment of redlight districts, machine-gunning of women and children, interment of alive persons, they are just mere preludes of the promised paradise that they called 'Greater East Asia Co-Prosperity Sphere.'

They promised religious liberty by compelling all protestant sects to unite, against the religious scruples and convictions of their members, in one group, and by profaning convents, seminaries, churches, and other cult centers of the Catholics, utilizing them as military barracks, munition dumps, artillery bases, deposits of bombs and gasoline, torture chambers and zones, and by compelling the government officials and employees to face and to bow in adoration before that caricature of divinity in the imperial palace of Tokyo.

The Japanese offered themselves to be our cultural mentors by depriving us of the use of our schools and colleges, by destroying our books and other means of culture, by falsifying the contents of school texts, by eliminating free press, the radio, all elemental principles of civilized conduct, by establishing classes of rudimentary Japanese so as to reduce the Filipinos to the mental level of the rude Japanese guards, and by disseminating all kinds of historical, political, and cultural falsehoods.

Invoking our geographical propinquity and race affinity, they had the insolence of calling us their brothers, without the prejudice of placing us in the category of slaves, treating the most prominent Filipinos in a much lower social and political category than that of the most ignorant and brutal subject of the Emperor.

The civil liberties of the citizens were annulled. Witnesses and litigants were slapped and tortured during investigations. In the prosecuting attorney's offices, no one was safe. When the Japanese arrested a person, the lawyer who dared to intercede was also placed under arrest. Even courts were not free from their despotic members. There were judges who had to trample laws and shock their conscience in order not to disgust a Nipponese.

The most noble of all professions, so much so that the universities of the world could not conceive of a higher honor that may be conferred than that of Doctor of Laws, became the most despised. It was dangerous to practice the profession by which faith in the effectiveness of law is maintained; citizens feel confident in the protection of their liberties, honor, and dignity; the weak may face the powerful; the lowest citizen is not afraid of the highest official; civil equality becomes a reality; justice is administered with more efficiency; and democracy becomes the best system of government and the best guaranty for the welfare and happiness of the individual human being. In fact, the profession of law was annulled, and the best lawyers for the unfortunate prisoners in Fort Santiago and other centers of torture were the military police, concubines, procurers, and spies, the providers of war materials and shameful pleasures, and the accomplices in fraudulent transactions, which were the specialty of many naval and military Japanese officers.

The courts and the Filipino government officials were completely helpless in the question of protecting the constitutional liberties and fundamental rights of the citizens who happen to be unfortunate enough to fall under the dragnet of the hated kempei. Even the highest government officials were not safe from arrest and

imprisonment in the dreaded military dungeons, where torture or horrible death were always awaiting the defenseless victim of Japanese brutality.

May any one be surprised if General MacArthur decided to annul all the judicial processes?

The evident policy of the author of the October Proclamation can be seen if we take into consideration the following provisions of the Japanese Constitution:

"ART. 57. The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor.

"ART. 61. No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the executive authority * * * shall be taken cognizance of by a Court of Law."

INTERNATIONAL LAW

Nobody dared challenge the validity of the October Proclamation.

Nobody dared challenge the authority of the military Commander in Chief who issued it.

Certainly not because of the awe aroused by the looming figure of General of the Army Douglas MacArthur, the Allied Supreme Commander, the military hero, the greatest American general, the Liberator of the Philippines, the conqueror of Japan, the gallant soldier under whose authority the Emperor of Japan, who is supposed to rule supreme for ages as a descendant of gods, is receiving orders with the humility of a prisoner of war.

No challenge has been hurled against the proclamation or the authority of the author to issue it, because everybody acknowledges the full legality of its issuance.

But because the proclamation will affect the interest and rights of a group of individuals, and to protect the same, a way is being sought to neutralize the effect of the proclamation.

The way found is to invoke international law. The big and resounding word is considered as a shibboleth powerful enough to shield the affected persons from the annulling impact.

Even then, international law is not invoked to challenge the legality or authority of the proclamation, but only to construe it in a convenient way so that judicial processes during the Japanese occupation, through an exceptional effort of the imagination, might be segregated from the processes mentioned in the proclamation.

An author said that the law of nations, the "jus gentium", is not a fixed nor immutable science. On the contrary, it is developing incessantly, it is perpetually changing in forms. In each turn it advances or recedes, according to the vicissitudes of history, and following the monotonous rhythm of the ebb and rise of the tide of the sea.

"Le droit des gens, en effet, n'est point une science fixe et immuable: bien au contraire, il se developpe sans cesse, il change eternellement de formes; tour a tour il avance et il recule, selon les vicissitudes de l'histoire et suivant un rythme monotone qui est comme le flux et le reflux d'un mer." (M. Revon, De l'existence du droit international sous la republique romain.)

Another author has this to say:

"International law, if it is or can be a science at all, or can be, at most, a regulative science, dealing with the conduct of States, that is, human beings in a certain capacity; and its principles and prescriptions are not, like those of science proper, final and unchanging. The substance of science proper is already made for man; the substance of international is actually made by man,—and different ages make differently." (Coleman Philippon, The International Law and Custom of Ancient Greece and Rome, Vol. I, p. 50.)

"Law must be stable, and yet it cannot stand still." (Pound, Interpretations of Legal History, p. 1.) Justice Cardozo adds: "Here is the great antinomy confronting us at every turn. Rest and motion, unrelieved and unchecked, are equally destructive. The law, like human kind, if life is to continue, must find some path of compromise." (The Growth of Law, p. 2.) Law is just one of the manifestations of human life, and "Life has relations not capable of division into inflexible compartments. The moulds expand and shrink." (Glanzer vs. Shepard, 233 N. Y., 236, 241.)

The characteristic plasticity of law is very noticeable, much more than in any other department, in international law.

"In certain matters it is clear we have made substantial progress, but in other points, he (M. Revon) maintains, we have retrograded; for example, in the middle ages the oath was not always respected as faithfully as in ancient Rome; and nearer our own times, in the seventeenth century, Grotius proclaims the unquestioned right of belligerents to massacre the women and children of the enemy; and in our more modern age the due declaration of war which Roman always conformed to has not been invariably observed." (Coleman Philippon, The International Law and Custom of Ancient Greece and Rome, Vol. I, p. 209.)

Now let us see if any principle of international law may affect the enforcement of the October Proclamation.

In this study we should be cautioned not to allow ourselves to be deluded by generalities and vagueness which are likely to lead us easily to error, in view of the absence of codification and statutory provisions.

Our Constitution provides:

"The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation." (Sec. 3, Art. II.)

There being no codified principles of international law, or enactments of its rules, we cannot rely on merely legal precepts.

With the exception of international conventions and treaties and, just recently, the Charter of the United Nations, adopted in the San Francisco Conference on June 26, 1945, we have to rely on unsystematized judicial pronouncements and reasonings and on theories, theses, and propositions that we may find in the works of authors and publicists.

Due to that characteristic pliability and imprecision of international law, the drafters of our Constitution had to content themselves with "generally accepted principles."

We must insist, therefore, that the principles should be specific and unmistakably defined, and that there is definite and conclusive evidence to the effect that they are generally accepted among the civilized nations of the world and that they belong to the current era and no other epochs of history.

The temptation of assuming the role of a legislator is greater in international law than in any other department of law, since there are no parliaments, congresses, legislative assemblies which can enact laws and specific statutes on the subject. It must be our concern to avoid falling in so a great temptation, as its dangers are incalculable. It would be like building castles in the thin air, or trying to find an exit in the thick dark forest where we are irretrievably lost. We must also be very careful in our logic. In so vast a field as international law, the fanciful wanderings of the imagination often impair the course of dialectics.

THE OCTOBER PROCLAMATION AND INTERNATIONAL LAW

Is there any principle of international law that may affect the October Proclamation?

We tried in vain to find out in the majority opinion anything as to the existence of any principle of international law under which the authority of General MacArthur to issue the proclamation can effectively be challenged.

No principle of international law has been, or could be, invoked as a basis for denying the author of the document legal authority to issue the same or any part thereof.

We awaited in vain for any one to dare deny General MacArthur the authority, under international law, to declare null and void and without effect, not only the laws and regulations of the governments under the Japanese regime, but all the processes of said governments, including judicial processes.

If General MacArthur, as Commander in Chief of the American Armed Forces of Liberation, had authority, full and legal, to issue the proclamation, the inescapable result will be the complete voidance and nullity of all judicial processes, procedures, and proceedings of all courts under the Japanese régime.

But those who are sponsoring the cause of said judicial processes try to achieve their aim, not by direct means, but by following a tortuous side-road.

They accept and recognize the full authority of the author of the proclamation to issue it and all its parts, but they maintain that General MacArthur did not and could not have in mind the idea of nullifying the judicial processes during the Japanese occupation, because that will be in violation of the principles of international law.

If we follow the reasoning of the majority opinion we will have to reach the conclusion that the word "processes" does not appear at all in the October Proclamation.

It is stated more than once, and reiterated with dogmatic emphasis, that under the principles of international law the judicial processes under an army of occupation cannot be invalidated.

But we waited in vain for the specific principle of international law, only one of those alluded to, to be pointed out to us.

If the law exists, it can be pointed out. If the principle exists, it can be stated specifically. The word is being used very often in plural, principles, but we need only one to be convinced.

The imagined principles are so shrouded in a thick maze of strained analogies and reasoning, that we confess our inability even to have a fleeting glimpse at them through their thick and invulnerable wrappers.

At every turn international law, the blatant words, are haunting us with the deafening bray of a trumpet, but after the transient sound has fled away, absorbed by the resiliency of the vast atmosphere, the announced principles, which are the very soul of international law, would disappear too with the lightning speed of a vanishing dream.

WEAKNESS OF THE MAJORITY POSITION

In the majority opinion three questions are propounded: first, whether judicial acts and proceedings during the Japanese occupation are valid even after liberation; second, whether the October Proclamation has invalidated all judgments and judicial proceedings under the Japanese regime; and third, whether the present courts of the Commonwealth may continue the judicial proceedings pending at the time of liberation.

As regards the first question, it is stated that it is a legal truism in political and international law that all acts of a de facto government are good and valid, that the governments established during the Japanese occupation, that is,

the Philippine Executive Commission and the Republic of the Philippines, were de facto governments, and that it necessarily follows that the judicial acts and proceedings of the courts of those governments, "which are not of a political complexion," were good and valid, and, by virtue of the principle of postliminium, remain good and valid after the liberation.

In the above reasoning we will see right away how the alleged legal truism in political and international law, stated as a premise in a sweeping way, as an absolute rule, is, immediately qualified by the exception as to judicial acts and proceedings which are of a "political complexion."

So it is the majority itself which destroys the validity of what it maintains as a legal truism in political and international law, by stating from the beginning of the absolute proposition that all acts and proceedings of the legislative, executive, and judicial departments of a de facto government are good and valid.

It is to be noted that no authority, absolutely no authority, has been cited to support the absolute and sweeping character of the majority proposition as stated in their opinion.

No authority could be cited, because the majority itself loses faith in the validity of such absolute and sweeping proposition, by establishing an unexplained exception as regards the judicial acts and proceedings of a "political complexion."

Besides, it is useless to try to find in the arguments of the majority anything that may challenge the power, the authority of a de jure government to annul the official acts of a de facto government, or the legal and indisputable authority of the restored legitimate government to refuse to recognize the official acts, legislative, executive and judicial, of the usurping government, once the same is ousted

As to the second question, the majority argues that, the judicial proceedings and judgments of the de facto governments under the Japanese regime being good and valid, "it should be presumed that it was not, and could not have been, the intention of General Douglas MacArthur to refer to judicial processes, when he used the last word in the October Proclamation, and that it only refers to governmental processes other than judicial processes or court proceedings."

The weakness and absolute ineffectiveness of the argument are self-evident.

It is maintained that when General MacArthur declared the processes of the governments under the Japanese regime null and void, he could not refer to judicial processes, because the same are valid and remained so under the legal truism announced by the majority to the effect that, under political and international law, all official acts of a de facto government, legislative, executive or judicial, are valid.

But we have seen already how the majority excepted from said legal truism the judicial processes of "political complexion."

And now it is stated that in annulling the processes of the governments under Japanese occupation, General MacArthur referred to "processes other than judicial processes."

That is, the legislative and executive processes.

But, did not the majority maintain that all acts and proceedings of legislative and executive departments of a de facto government are good and valid? Did it not maintain that they are so as a "legal truism in political and international law? "

Now, of the reasoning of the majority to the effect that General MacArthur could not refer to judicial processes because they are good and valid in accordance with international law, why should the same reasoning not apply to

legislative and executive processes?

Why does the majority maintain that, notwithstanding the fact that, according to said legal truism, legislative and executive official acts of de facto governments are good and valid, General MacArthur referred to the latter in his annulling proclamation, but not to judicial processes?

If the argument is good so as to exclude judicial processes from the effect the effect of the October Proclamation, we can see no logic in considering it bad with respect to legislative and executive processes.

If the argument is bad with respect to legislative and executive processes, there is no logic in holding that it is not good with respect to judicial processes.

Therefore, if the argument of the majority opinion is good, the inevitable conclusion is that General MacArthur did not declare null and void any processes at all, whether legislative processes, executive processes, or judicial processes, and that the word "processes" used by him in the October Proclamation is a mere surplusage or an ornamental literary appendix.

The absurdity of the conclusion unmasks the utter futility of the position of the majority, which is but a mere legal pretense that cannot stand the least analysis or the test of logic.

A great legal luminary admonished that we must have courage to unmask pretense if we are to reach a peace that will abide beyond the fleeting hour.

It is admitted that the commanding general of a belligerent army of occupation as an agent of his government, "may not unlawfully suspend existing laws and promulgate new ones in the occupied territory if and when exigencies of the military occupation demand such action," but it is doubted whether the commanding general of the army of the restored legitimate government can exercise the same broad legislative powers.

We beg to disagree with a theory so unreasonable and subversive.

We cannot accept that the commanding general of an army of occupation, of a rebellious army, of an invading army, or of a usurping army, should enjoy greater legal authority during the illegal, and in the case of the Japanese, iniquitous and bestial occupation, than the official representative of the legitimate government, once restored in the territory wrested from the brutal invaders and aggressors. We cannot agree with such legal travesty.

Broad and unlimited powers are granted and recognized in the commanding general of an army of invasion, but the shadow of the vanishing alleged principle of international law is being brandished to gag, manacle, and make completely powerless the commander of an army of liberation to wipe out the official acts of the government of usurpation, although said acts might impair the military operation or neutralize the public policies of the restored legitimate government.

We are not unmindful of the interests of the persons who might be adversely affected by the annulment of the judicial processes of the governments under the Japanese regime, but we cannot help smiling when we hear that chaos will reign or that the world will sink.

It is possible that some criminals will be let loose unpunished, but nobody has ever been alarmed that the President, in the exercise of his constitutional powers of pardon and amnesty, had in the past released many criminals from imprisonment. And let us not forget that, due to human limitations, in all countries, under all governments, in peace or in war, there were, there are, and there will always be unpunished criminals, and that situation never caused despair to any one.

We can conceive of inconveniences and hardships, but they are necessary contributions to great and noble purposes. Untold sacrifices were always offered to attain high ideals and in behalf of worthy causes.

We cannot refrain from feeling a paternal emotion for those who are trembling with all sincerity because of the belief that the avoidance of judicial proceedings of the governments under the Japanese régime "would paralyze the social life of the country." To allay such fear we must remind them that the country that produced many great heroes and martyrs; that contributed some of the highest moral figures that humanity has ever produced in all history; which is inhabited by a race which was able to traverse in immemorial times the vast expanses of the Indian Ocean and the Pacific with inadequate means of navigation, and to inhabit in many islands so distantly located, from Madagascar to the eastern Pacific; which made possible the wonderful resistance of Bataan and Corregidor, can not have a social life so frail as to be easily paralyzed by the annulment of some judicial proceedings. The Japanese vandalisms during the last three years of nightmares and bestial oppression, during the long period of our national slavery, and the wholesale massacres and destructions in Manila and many other cities and municipalities and populated areas', were not able to paralyze the social life of our people. Let us not lose faith so easily in the inherent vitality of the social life of the people and country of Rizal and Mabini.

It is insinuated that because of the thought that the representative of the restored sovereign power may set aside all judicial processes of the army of occupation, in the case of a future invasion, litigants will not submit their cases to courts whose judgment may afterwards be annulled, and criminals would not be deterred from committing offenses in the expectancy that they may escape penalty upon liberation of the country. We hope that Providence will never allow the Philippines to fall again under the arms of an invading army, but if such misfortune will happen, let the October Proclamation serve as a notice to the ruthless invaders that the official acts of the government of occupation will not merit any recognition from the legitimate government, specially if they should not conduct themselves, as exemplified by the Japanese, in accordance with the rules of action of a civilized state.

One conclusive evidence of the untenableness of the majority position is the fact that it had to resort to Executive Order No. 37, issued on March 10, 1945, providing "that all cases that have heretofore been appealed to the Court of Appeals shall be transmitted to the Supreme Court for final decision." The far-fetched theory is advanced that this provision impliedly recognizes the court processes during the Japanese military occupation, on the false assumption that it refers to the Court of Appeals existing during the Japanese regime. It is self-evident that the Executive Order could have referred only to the Commonwealth Court of Appeals, which is the one declared abolished in said order. Certainly no one will entertain the absurd idea that the President of the Philippines could have thought of abolishing the Court of Appeals under the government during the Japanese occupation. Said Court of Appeals disappeared with the ouster of the Japanese military administration from which it derived its existence and powers. The Court of Appeals existing on March 10, 1945, at the time of the issuance of Executive Order No. 37, was the Commonwealth Court of Appeals and it was the only one that could be abolished.

Without discussing the correctness of the principle stated, the majority opinion quotes from Wheaton the following: "Moreover when it is said that an occupier's acts are valid and under international law should not be abrogated by the subsequent conqueror, it must be remembered that on crucial instances exist to show that if his acts should be reversed, any international wrong would be committed. What does happen is that most matters are allowed to stand by the restored government, but the matter can hardly be put further than this." (Wheaton, *International Law, War*, 7th English edition of 1944, p. 245.)

Then it says that there is no doubt that the subsequent conqueror has the right to abrogate most of the acts of the occupier, such as the laws, regulations and processes other than judicial of the government established by the belligerent occupant.

It is evident that the statement just quoted is a complete diversion from the principle stated in an unmistakable way by Wheaton, who says in definite terms that "it must be remembered that no crucial instances exist to show that if his acts (the occupant's) should be reversed, any international wrong would be committed."

It can be clearly seen that Wheaton does not make any distinction or point out any exception.

But in the majority opinion the principle is qualified, without stating any reason therefor, by limiting the right of the restored government' to annul "most of the acts of the occupier" and "processes other than judicial."

The statement made by the respondent judge after quoting the above-mentioned principle, as stated by Wheaton, to the effect that whether the acts of the military occupant should be considered valid or not, is a question that is up to the restored government to decide, and that there is no rule of international law that denies to the restored government the right to exercise its discretion on the matter, is quoted without discussion in the majority opinion.

As the statement is not disputed, we are entitled to presume that it is concurred in and, therefore, the qualifications made in the statement in the majority opinion seem to be completely groundless.

THE DUTIES IMPOSED ON OCCUPANT ARMY ARE NOT LIMITATIONS TO THE RIGHTS OF THE LEGITIMATE GOVERNMENT

The majority opinion is accumulating authorities to show the many duties imposed by international law on the military occupant of an invaded country.

And from said duties it is deduced that the legitimate government, once restored in his own territory, is bound to respect all the official acts of the government established by the usurping army, except judicial processes of political complexion.

The reasoning calls for immediate opposition. It is absolutely contrary to all principles of logic.

Between the duties imposed on the military occupant and the legal prerogatives of the legitimate government there are no logical relationship or connection that might bind the ones with the others.

The military occupant is duty bound to protect the civil rights of the inhabitants, but why should the legitimate government necessarily validate the measures adopted by said occupant in the performance of this duty, if the legitimate government believes his duty to annul them for weighty reasons?

The military occupant is duty bound to establish courts of justice. Why should the legitimate government validate the acts of said courts, if it is convinced that said courts were absolutely powerless, as was the case during the Japanese occupation, to stop the horrible abuses of the military police, to give relief to the victims of zoning and Fort Santiago tortures, to protect the fundamental human rights of the Filipinos—life, property, and personal freedom?

The majority opinion recognizes in the military occupant the power to annul the official acts of the ousted and supplanted legitimate government, a privilege which is inversely denied to the last. This preference and predilection in favor of the military occupant, that is in favor of the invader and usurper, and against the legitimate government, is simply disconcerting, if we have to say the least.

PRESUMPTIONS AND SUPPOSITIONS AGAINST TRUTH AND FACTS

The invading military occupant is duty bound to establish and maintain courts of justice in the invaded territory, for the protection of the inhabitants thereof. It is presumed that the restored legitimate government will respect the acts of said courts of the army of occupation. Therefore, it is a principle of international law that said acts are valid and should be respected by the legitimate government. It is presumed that General MacArthur is acquainted with such principle, discovered or revealed through presumptive operations, and it is presumed that he had not the

intention of declaring null and void the judicial processes of the government during the Japanese regime. Therefore, his October Proclamation, declaring null and void and without effect "all processes" of said governments, in fact, did not annul the Japanese regime judicial processes.

So runs the logic of the majority.

They don't mind that General MacArthur speaks in the October Proclamation as follows:

"NOW, THEREFORE, I, Douglas MacArthur, General, United States Army, as Commander-in-Chief of the military forces committed to the liberation of the Philippines, do hereby proclaim and declare:

* * * * *

"3. That all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control." (Italics supplied.)

General MacArthur says categorically "all processes", but the majority insists on reading differently, that is: "NOT ALL processes."

The majority presume, suppose, against the unequivocal meaning of simple and well known words, that when General MacArthur said "all processes", in fact, he said "not all processes", because it is necessary, by presumption, by supposition, to exclude judicial processes.

If where General MacArthur says "all", the majority shall insist on reading "not all", it is impossible to foresee the consequences of such so stubborn attitude, but it is possible to understand how they reached the unacceptable conclusion which we cannot avoid opposing and exposing.

Are we to adopt and follow the policy of deciding cases submitted to our consideration, by presumptions and suppositions putting aside truths and facts? Are we to place in the documents presented to us, such as the October Proclamation, different words than what are written therein? Are we to read "not all", where it is written "all"?

We are afraid that such procedure is not precisely the most appropriate to keep public confidence in the effectiveness of the administration of justice.

That is why we must insist that in the October Proclamation should be read what General MacArthur has written in it, that is, that, besides laws and regulations, he declared and proclaimed null and void "ALL processes", including naturally judicial processes, of the governments under the Japanese regime.

THE COMMONWEALTH COURTS HAVE NO JURISDICTION TO CONTINUE JAPANESE REGIME JUDICIAL PROCESSES

Now we come to the third and last question propounded in the majority opinion.

The jurisdiction of the Commonwealth tribunals is denned, prescribed, and apportioned by legislative act.

It is provided so in our Constitution. (Section 2, Article VIII.)

The Commonwealth courts of justice are continuations of the courts established before the inauguration of the Commonwealth and before the Constitution took effect on November 15, 1935. And their jurisdiction is the same as provided by existing laws at the time of the inauguration of the Commonwealth Government.

Act No. 136 of the Philippine Commission, known as the Organic Act of the courts of justice of the Philippines, is the one that defines the jurisdiction of justice of the peace and municipal courts, Courts of First Instance, and the

Supreme Court. It is not necessary to mention here the jurisdiction of the Court of Appeals, because the same has been abolished by Executive Order No. 37.

No provision may be found in Act No. 136, nor in any other law of the Philippines, conferring on the Commonwealth tribunals jurisdiction to continue the judicial processes or proceedings of tribunals belonging to other governments, such as the governments established during the Japanese occupation.

The jurisdiction of our justice of the peace and municipal courts is provided in section 68, Chapter V, of Act No. 136. The original and appellate jurisdiction of the Courts of First Instance is provided in sections 56 and 57, Chapter IV, of Act No. 136. The original and appellate jurisdiction of the Supreme Court is provided in sections 17 and 18, Chapter II, of the same Act. The provisions of the above-cited sections do not authorize, even implicitly, any of, the said tribunals to execute or order the execution of the decisions and judgments of tribunals of other governments, nor to continue the processes or proceedings of said tribunals.

NECESSITY OF ENABLING ACT UNDER THE LEGAL DOCTRINE PREVAILING IN THE PHILIPPINES AND IN THE UNITED STATES

Taking aside the question as to whether the judicial processes of the government established during the Japanese occupation should be considered valid or not, in order that said processes could be continued and the Commonwealth tribunals could exercise proper jurisdiction to continue them, under a well-established legal doctrine, prevailing not only in the Philippines, but also in the United States, it is necessary to that effect to enact the proper enabling law.

Almost half a century ago, in the instructions given by President McKinley on April 7, 1900, for the guidance of the Philippine Commission, it was stated that, in all the forms of the government and administrative provisions which they were authorized to prescribe, the Commission should bear in mind that the government which they were establishing was designed not for the satisfaction of the Americans or for the expression of their theoretical views, but for the happiness, peace, and prosperity of the people of the Philippines, and the measures adopted should be made to conform to their customs, their habits, and even their prejudices, to the fullest extent consistent with the accomplishment of the indispensable requisites of just and effective government.

Notwithstanding the policy so outlined, it was not enough for the Philippine Commission to create and establish the courts of justice provided in Act No. 136, in order that said tribunals could take cognizance and continue the judicial proceedings of the tribunals existing in the Philippines at the time of the American occupation.

It needed specific enabling provisions in order that the new tribunals might continue the processes pending in the tribunals established by the Spaniards, and which continued to function until they were substituted by the courts created by the Philippine Commission.

So it was done in regards to the transfer of the cases pending before the Spanish Audiencia to the newly created Supreme Court, in sections 38 and 39 of Act No. 136, quoted as follows:

"SEC. 38. Disposition of causes, actions, proceedings, appeals, records, papers, and so forth, pending in the existing Supreme Court and in the 'Contencioso Administrativo.'—All records, books, papers, causes, actions, proceedings, and appeals lodged, deposited, or pending in the existing Audiencia or Supreme Court, or pending by appeal before the Spanish tribunal called 'Contencioso Administrativo,' are transferred to the Supreme Court above provided for, which has the same power and jurisdiction over them as if they had been in the first instance lodged, filed, or pending therein, or, in case of appeal, appealed thereto.

"SEC. 39. Abolition of existing Supreme Court.—The existing Audiencia or Supreme Court is hereby

abolished, and the Supreme Court provided by this Act is substituted in place thereof."

Sections 64 and 65 of the same Act followed the same procedure as regards the transfer of cases and processes pending in the abolished Spanish Courts of First Instance to the tribunals of the same name established by the Philippine Commission.

"SEC. 64. Disposition of records, papers, causes, and appeals, now pending in the existing Courts of First Instance.—All records, books, papers, actions, proceeding's, and appeals lodged, deposited, or pending in the Court of First Instance as now constituted of or in any province, are transferred to the Court of First Instance of such province hereby established, which shall have the same power and jurisdiction over them as if they had been primarily lodged, deposited, filed, or commenced therein, or in cases of appeal, appealed thereto.

"SEC. 65. Abolition of existing Courts of First Instance.—The existing Courts of First Instance are hereby abolished, and the Courts of First Instance provided by this Act are substituted in place thereof."

The same procedure has been followed by the Philippine Commission even though the courts of origin of the judicial processes to be transferred and continued belonged to the same government and sovereignty of the courts which are empowered to continue said processes.

So section 78 of Act No. 136, after the repeal of all acts conferring upon American provost courts in the Philippines jurisdiction over civil actions, expressly provided that said civil actions shall be transferred to the newly created tribunals.

And it provided specifically that "the Supreme Court, Courts of the First Instance and courts of the justice of the peace established by this Act (No. 136) are authorized to try and determine the actions so transferred to them respectively from the provost courts, in the same manner and with the same legal effect as though such actions had originally been commenced in the courts created" by virtue of said Act.

MUNICIPAL COURTS UNDER ACT NO. 183

On July 30 1901, the Philippine Commission enacted the Organic Act of the City of Manila, No. 183.

Two municipal courts for the city were created by section 40 of said Act, one for the northern side of Pasig River and the other for the southern side.

They were courts with criminal jurisdiction on identical cases under the jurisdiction of the justices of the peace then existing in Manila. Although both courts were of the same jurisdiction, in order that the criminal cases belonging to the justice of the peace courts may be transferred to the municipal courts just created, and the proceedings may be continued by the same, the Philippine Commission considered it necessary to pas the proper enabling act.

So on August 5, 1901, it enacted Act No. 186, section 2 of which provides that all criminal cases and proceedings pending in the justices of the peace of Manila are transferred to the municipal courts, which are conferred the jurisdiction to continue said cases and proceedings.

THE CABANTAG CASE

On August 1, 1901, Narciso Cabantag was convicted of murder by a military commission. (Cabantag vs. Wolfe, 6 Phil., 273.) The decision was confirmed on December 10, 1901, and his execution by hanging was set for January 12, 1902.

On December 26, 1901, he fled, but surrendered to the authorities on July 18, 1902. The Civil Governor on

December 2, 1903, commuted the death penalty to 20 years imprisonment. The commutation was approved by the Secretary of War, following instructions of the President.

Cabantag filed later a writ of habeas corpus on the theory that, with the abolition of the military commission which convicted him, there was no existing tribunal which could order the execution of the penalty of imprisonment.

The Supreme Court denied the writ, but stated that, if the petitioner had filed the writ before the enactment of Act No. 865, the question presented to the Supreme Court would have been different.

Act No. 865, enacted on September 3, 1903, is an enabling law, wherein it is provided that decisions rendered by provost courts and military commission shall be ordered executed by Courts of First Instance in accordance with the procedure outlined in said Act.

It is evident from the foregoing that this Supreme Court has accepted and confirmed the doctrine of the necessity of an enabling act in order that our Courts of First Instance could exercise jurisdiction to execute the decision of the abolished provost courts and military commission.

It is evident that the doctrine is applicable, with more force, to the judicial processes coming from governments deriving their authority from a foreign enemy state.

THE DOCTRINE IN THE UNITED STATES

It is also evident that the Congress of the United States, by enacting the Bill of the Philippines on July 1, 1902, confirmed also the same doctrine.

In effect, in section 9 of said Act, the Congress approved what the Philippine Commission did as to the jurisdiction of the courts established and transfer of cases and judicial processes, as provided in Acts Nos. 136, 186, and 865.

The same doctrine was adopted by the United States government as part of its international policy, as could be seen in Article XII of the Treaty concluded with Spain on December 10, 1898, in Paris.

Even in 1866 the Congress of the United States followed the same doctrine.

"The suit, shown by the record, was originally instituted in the District Court of the United States for the District of Louisiana, where a decree was rendered for the libellant. From the decree an appeal was taken to the Circuit Court, where the case was pending, when, in 1861, the proceedings of the court were interrupted "by the civil war. Louisiana had become involved in the rebellion, and the courts and officers of the United States were excluded from its limits. In 1862, however, the National authority had been partially re-established in the State, though still liable to be overthrown by the vicissitudes of war. The troops of the Union occupied New Orleans, and held military possession of the city and such other portions of the State as had submitted to the General Government. The nature of this occupation and possession was fully explained in the case of *The Venice*.

"Whilst it continued, on the 20th of October, 1862, President Lincoln, by proclamation, instituted a Provisional Court of the State of Louisiana, with authority, among other powers, to hear, try, and determine all causes in admiralty. Subsequently, by consent of parties, this cause was transferred into the Provisional Court thus constituted, and was heard, and a decree was again rendered in favor of the libellants. Upon the restoration of civil authority in the State, the Provincial Court, limited in duration, according to the terms of the proclamation, by that event, ceased to exist.

"On the 28th of July, 1866, Congress enacted that all suits, causes, and proceedings in the Provisional Court,

proper for the jurisdiction of the Circuit Court of the United States for the Eastern District of Louisiana, should be transferred to that court, and heard and determined therein; and. that all judgments, orders, and decrees of the Provisional Court in causes transferred to the Circuit Court should at once become the orders, judgments, and decrees of that court, and might be enforced, pleaded, and proved accordingly.

"It is questioned upon these facts whether the establishment by the President of a Provisional Court was warranted by the Constitution.

* * * * *

"We have no doubt that the Provisional Court of Louisiana was properly established by the President in the exercise of this constitutional authority during war; or that Congress had power, upon the close of the war, and the dissolution of the Provisional Court, to provide for the transfer of cases pending in that court, and of its judgments and decrees, to the proper courts of the United States." (U. S. Reports, Wallace, Vol. 9, The Grapeshot, 131-133.)

JUDGMENTS OF REBEL COURTS IN LOUISIANA WERE VALIDATED BY CONSTITUTIONAL PROVISION

During the civil war in 1861, the prevailing rebel forces established their own government in Louisiana.

When the rebel forces were overpowered by the Union Forces and the de facto government was replaced by the de jure government, to give effect to the judgments and other judicial acts of the rebel government, from January 26, 1861, up to the date of the adoption of the State Constitution, a provision to said effect was inserted in said document.

Section 149 of the Louisiana Constitution reads as follows :

"All rights, actions, prosecutions, claims, contracts, and all laws in force at the time of the adoption of this constitution, and not inconsistent therewith, shall continue as if it had not been adopted; all judgments and judicial sales, marriages, and executed contracts made in good faith and in accordance with existing laws in this State rendered, made, or entered into, between the 26th day of January, 1861, and the date when this constitution shall be adopted, are hereby declared to be valid," etc. (U. S. Reports, Wallace, Vol. 22, Mechanics' etc. Bank vs. Union Bank, 281.)

EVEN AMONG SISTER STATES OF THE UNITED STATES JUDGMENTS ARE NOT EXECUTORY

The member states of the United States of America belong to the same nation, to the same country, and are under the same sovereignty.

But judgments rendered in one state are not executory in other states.

To give them effect in other states it is necessary to initiate an original judicial proceedings, and therein the defendants in the domestic suit may plead in bar the sister state judgment puis darrien continuance. (Wharton, on the Conflict of Laws, Vol. II, p. 1411.)

"Under the Constitution of the United States, when a judgment of one state in the Union is offered in a court of a sister state as the basis of a suit *nil debet* cannot be pleaded. The only proper plea is *nul tiel record*." (Id., p. 1413.)

"It is competent for the defendant, however, to an action on a judgment of a sister state, as to an action on a foreign judgment, to set up as a defense, want of jurisdiction of the court rendering the judgment; and, as indicating such want of jurisdiction, to aver by plea that the defendant was not an inhabitant of the state rendering the judgment, and had not been served with process, and did not enter his appearance; or that the

attorney was without authority to appear." (Id., pp. 1414-1415.)

The inevitable consequence is that the courts of the Commonwealth of the Philippines, in the absence of an enabling set or of an express legislative grant, have no jurisdiction to take cognizance and continue the judicial processes, procedures, and proceedings of the tribunals which were created by the Japanese Military Administration and functioned under the Vargas Philippine Executive Commission or the Laurel Republic of the Philippines, deriving their authority from the Emperor, the absolute ruler of Japan, the invading enemy, and not from the Filipino people in whom, according to the Constitution, sovereignty resides, and from whom all powers of government emanate.

The position of Honorable Arsenio P. Dizon, the respondent judge of the Court of First Instance of Manila, in declaring himself without jurisdiction nor authority to continue the proceedings which provoked the present controversy, being a judicial process of a Japanese sponsored government, is absolutely correct, under the legal doctrines established by the United States and the Philippine Government, and consistently, invariably, and without exception, followed by the same.

If we accept, for the sake of argument, the false hypothesis that the Commonwealth tribunals have jurisdiction to continue the judicial processes left pending by the courts of the governments established under the Japanese régime, the courts which disappeared and, automatically, ceased to function with the ouster of the enemy, the position of Judge Dizon, in declining to continue the case, is still unassailable, because, for all legal purposes, it is the same as if the judicial processes in said case were not taken at all, as an inevitable result of the sweeping and absolute annulment declared by General MacArthur in the October Proclamation.

In said proclamation it is declared in unmistakable and definite terms that "ALL PROCESSES" of the Japanese sponsored governments "ARE NULL AND VOID AND WITHOUT LEGAL EFFECT", and they shall remain so until the Commonwealth, through its legislative power, decides otherwise in a proper validating act.

The fact that the Japanese invaders, under international law, were in duty bound to establish courts of justice during the occupation, although they made them completely powerless to safeguard the constitutional rights of the citizens, and mere figureheads as regards the fundamental liberties of the helpless men, women and children of our people, so much so that said courts could not offer even the semblance of protection when the life, the liberty, the honor and dignity of our individual citizens were wantonly trampled by any Japanese, military or civilian, does not change the situation. "ALL PROCESSES" of said court are declared "NULL AND VOID AND WITHOUT LEGAL EFFECT" in the October Proclamation, and we do not have any other alternative but to accept the law, as said proclamation, has the full force of a law.

The fact that in the past, the legitimate governments, once restored in their own territory, condescended in many cases to recognize and to give effect to judgments rendered by courts under the governments set up by an invading military occupant or by a rebel army, does not elevate such condescension to the category of a principle of international law. It cannot be a principle, when Wheaton declares that no international wrong is done if the acts of the invader are reversed.

Many irrelevant authorities were cited to us as to the duties imposed by international law on military occupants, but no authority has been cited to the effect that the representative of the restored legitimate government is bound to recognize and accept as valid the acts and processes of said occupants. On the contrary, Wheaton says that if the occupant's acts are reversed "no international wrong would be committed."

Following the authority of Wheaton, undisputed by the majority, General MacArthur thought, as the wisest course, of declaring "NULL AND VOID AND WITHOUT EFFECT," by official proclamation, "ALL

PROCESSES" under the Japanese regime, that is, legislative, executive and judicial processes, which fall under the absolute adjective "ALL".

That declaration is a law. It is a law that everybody is bound to accept and respect, as all laws must be accepted and respected. It is a law that the tribunals are duty bound to give effect and apply.

We are not unmindful of the adverse consequences to some individuals of the annulment of all the judicial processes under the Japanese regime, as provided in the October Proclamation, but the tribunals are not the guardians of the legislative authorities, either an army commander in chief, during war, or a normal legislature, in peace time. The tribunals are not called upon to guide the legislative authorities as to the wisdom of the laws to be enacted. That is the legislative responsibility. Our duty and our responsibility is to see to it that the law, once enacted, be applied and complied with.

No matter the consequences, no matter who might be adversely affected, a judge must have the firm resolve and the courage to do his duty, as, in the present case, Judge Dizon did, without fear nor favor. We cannot see any reason why we should not uphold him in his stand in upholding the law.

It is our official duty, national and international duty. Yes. Because this Supreme Court is sitting, not only as a national court, but as an international court, as is correctly stated in the concurring opinion of Justice De Joya, and we should feel the full weight of the corresponding responsibility, as the American courts with admiralty jurisdiction and the Prize Courts of England did feel. In fact, it is in the judiciary where, more than in any other department of the government, the international point of view is more pressing, more imperative, more unavoidable. Justice has no country. It is of all countries. The horizon of justice cannot be limited by the scene where our tribunals are functioning and moving. That horizon is boundless. That is why in our Constitution the bill of rights has been written not for Filipinos, but for all persons. They are rights that belong to men, not as Filipinos, Americans, Russians, Chinese, or Malayan, but as members of humanity. The international character of our duty to administer justice has become more specific by the membership of our country in the United Nations. And let us not forget, as an elemental thing, that our primary duty is to uphold and apply the law, as it is; that we must not replace the words of the law with what we might be inclined to surmise; that what is clearly and definitely provided should not be substituted with conjectures and suppositions; that we should not try to deduce a contrary intention to that which is unequivocally stated in the law; that we should not hold valid what is conclusively declared null and void.

The October Proclamation declared "ALL PROCESSES" under the Japanese regime "NULL AND VOID AND WITHOUT EFFECT", so they must stand. There is no possible way of evasion. "ALL PROCESSES", in view of the meaning of the absolute adjective "ALL", include "JUDICIAL PROCESSES". *Allegatio contra factum non est admittenda.*

CONCLUSION

For all the foregoing reasons we conclude:

1. That General MacArthur had full legal authority to issue the October Proclamation, and that no principle of international law is violated by said proclamation, no international wrong being committed by the reversal by the legitimate government of the acts of the military invader.
2. That said proclamation was issued in full conformity with the official policies to which the United States and Philippine Governments were committed, and the annulment of all the acts of the governments under the Japanese regime, legislative, executive, and judicial, is legal, and justified by the wrongs committed by the Japanese.

3. That when General MacArthur proclaimed and declared in the October Proclamation "That all laws, regulations and processes" of the Japanese sponsored governments, during enemy occupation, "are null and void and without effect", he meant exactly what he said.
4. That where General MacArthur said "all processes", we must read and understand precisely and exactly "all processes", and not "some processes". "All" and "some" have incompatible meanings and are not interchangeable.
5. That the word "processes" includes judicial procedures, proceedings, processes, and cases. Therefore, "all processes" must include "all judicial processes."
6. That we have no right to attribute to General MacArthur an intention different from what he has plainly, clearly, unmistakably expressed in unambiguous words with familiar meaning generally understood by the common man.
7. That the judicial proceedings here in question are included among those adversely affected by the October Proclamation.
8. That the Commonwealth tribunals have no jurisdiction to take cognizance of nor to continue the judicial proceedings under the Japanese regime.
9. That to exercise said jurisdiction an enabling act of Congress is necessary.
10. That respondent Judge Dizon did not commit the error complained of in the petition, and that the petition has no merits at all.

We refuse to follow the course of action taken by the majority in the present case. It is a course based on a mistaken conception of the principles of international law and their interpretation and application, and on a pinchbeck and self-contradicting logic in support of a baseless surmise. It is a course based on misconstruction or misunderstanding of the October Proclamation, in utter disregard of the most elemental principles of legal hermeneutics. It is a course that leads to nowhere, except to the brink of disaster, because it is following the dangerous path of ignoring or disobeying the law.

Let us not allow ourselves to be deceived. The issue confronting us is not of passing importance. It is an issue of awesome magnitude and transcendence. It goes to and reaches the very bottom. It is simple. Lacking in complexities. But it may shake the very foundation of society, the cornerstone of the state, the primary pillar of the nation. It may dry the very foundation of social life, the source of the vitalizing sap that nurtures the body politic. The issue is between the validity of one or more Japanese-régime processes and the sanctity of the law.

That is the question, reduced to its ultimate terms. It is a simple dilemma that is facing us. It is the alpha and omega of the whole issue. Either the processes, or the law. We have to select between two, which to uphold. It is a dilemma that does not admit of middle terms, or of middle ways where we can loiter with happy unconcern. We are in the crossroad: which way shall we follow? The processes and the law are placed in the opposite ends of the balance. Shall we incline the balance of justice to uphold the processes and defeat law, or vice versa?

We feel jittery because some judicial processes might be rescinded or annulled, but we do not tremble with sincere alarm at the thought of putting the law under the axe, of sentencing law to be executed by the guillotine. We feel uneasy, fancying chaos and paralyzation of social life, because some litigants in cases during the Japanese regime will be affected in their private interests, with the annulment of some judicial processes, but we adopt an attitude of complete nonchalance in throwing law overboard. This baffling attitude is a judicial puzzle that nobody will understand. So it is better that we should shift to a more understandable way, that which is conformable to the standard that the world expects in judicial action.

No amount of arguments and elucubrations, no amount of speculative gymnastics, no amount of juggling of immaterial principles of international law, no amount of presumptions and suppositions, surmises and conjectures, no amount of dexterity in juridical exegesis can divert our attention from the real, simple, looming hypostasis of the issue before us: Law. It is Law with all its majestic grandeur which we are defying and intending to overthrow from the sacred pedestal where the ages had placed her as a goddess, to be enshrined, obeyed, and venerated by men, forever. Let us not dare to lay our profaning hands on her vestal virginity, lest the oracle should fling at us the thunder of his prophetic anathema.

We cannot therefore vote except for the denial of the petition.

HILADO, J., dissenting:

I dissent from the opinion of the majority and, pursuant to the Constitution, proceed to state the reason for my dissent.

The proceedings involved in the case at bar were commenced by a complaint filed by the instant petitioner, as plaintiff, on November 18, 1944, in civil case No. 3012 of the so-called Court of First Instance of Manila, the complaint bearing this heading and title: "The Republic of the Philippines—In the Court of First Instance of Manila" (Annex X of Exhibit A of petition for mandamus). The farthest that said proceedings had gone before the record was burned or destroyed during the battle for Manila, was the filing by counsel for plaintiff therein of their opposition to a motion for dismissal filed by opposing counsel.

It is, therefore, plain that the case had not been heard on the merits when the record was burned or destroyed.

The respondent judge, in his order dated June 6, 1945, disposing of the petition dated May 25, 1945 filed by petitioner, as plaintiff in said case, and of the petition filed by respondent Eusebio Valdez Tan Keh, as defendant therein, on May 31, 1945, held: "first, that by virtue of the proclamation of General MacArthur quoted above, all laws, regulations and processes of any other government in the Philippines than that of the Commonwealth became null and void and without legal effect in. Manila on February 3, 1945 or, at the latest, on February 27 of the same year; second that the proceedings and processes had in the present case having been before a court of the Republic of the Philippines and in accordance with the laws and regulations of said Republic, the same are now void and without legal effect; third, that this Court, as one of the different courts of general jurisdiction of the Commonwealth of the Philippines, has no authority to take cognizance of and continue said proceedings to final judgment, until and unless the Government of the Commonwealth of the Philippines, in the manner and form provided by law, shall have provided for the transfer of the jurisdiction of the courts of the now defunct Republic of the Philippines, and the causes commenced and left pending therein, to the courts created and organized by virtue of the provisions of Act No. 4007, as revived by Executive Order No. 36, or for the validation of all proceedings had in said courts."

Petitioner prays that this Court declare that the respondent judge should not have ordered the suspension of the proceedings in civil case No. 3012 and should continue and dispose of all the incidents in said case till its complete termination. In my opinion, the petition should be denied.

In stating the reasons for this dissent, we may divide the arguments under the following propositions:

1. The proceedings in said civil case No. 3012 are null and void under General of the Army MacArthur's proclamation of October 23, 1944 (41 Off. Gaz., 147, 148);
2. (a) The government styled as, first, the "Philippine Executive Commission" and later as the "Republic of the

Philippines", established here by the Commander in Chief of the Imperial Japanese Forces or by his order was not a de facto government—the so-called Court of First Instance of Manila was not a de facto court, and the judge who presided it was not a de facto judge; (b) the rules of International Law regarding the establishment of a de facto Government in territory belonging to a belligerent but occupied or controlled by an opposing belligerent are inapplicable to the governments thus established here by Japan;

3. The courts of those governments were entirely different from our Commonwealth courts before and after the Japanese occupation;

4. The question boils down to whether the Commonwealth (Government, as now restored, is to be bound by the acts of either or both of those Japanese-sponsored governments;

5. Even consideration of policy or practical convenience militate against petitioner's contention.

I

The proceedings in said civil case No. 3012 are null and void under General of the Army MacArthur's proclamation of October 23, 1944 (41 Off. Gaz., 147, 148).

In this proclamation, after reciting certain now historic facts, among which was that the so-called government styled as the "Republic of the Philippines" was established on October 14, 1943 "under enemy duress, * * * based upon neither the free expression of the people's will nor the sanction of the Government of the United States," the great Commander-in-Chief proclaimed and declared:

* * * * *

"3. That all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control; and

* * * * *

"I do enjoin upon all loyal citizens of the Philippines full respect for and obedience to the Constitution of the Commonwealth of the Philippines and the laws, regulations and other acts of their duly constituted government whose seat is now firmly re-established on Philippine soil."

The evident meaning and effect of the 3rd paragraph above quoted is, I think, that as the different areas of the Philippines were progressively liberated, the declaration of nullity therein contained shall attach to the laws, regulations and processes thus condemned in so far as said areas were concerned. Mark that the proclamation did not provide that such laws, regulations and processes shall be or are annulled, but that they are null and void. Annulment implies some degree of effectiveness in the act annulled previous to the annulment, but a declaration of nullity denotes that the act is null and void ab initio—the nullity precedes the declaration. The proclamation speaks in the present tense, not in the future. If so, the fact that the declaration of nullity as to the condemned laws, regulations and processes in areas not yet free from enemy occupation and control upon the date of the proclamation, would attach thereto at a later date, is no argument for giving them validity or effectiveness in the interregnum. By the very terms of the proclamation itself, that nullity had to date back from the inception of such laws, regulations and processes; and to dispel any shadow of doubt which may still remain, we need only consider the concluding paragraph of the proclamation wherein the Commander in Chief of the army of liberation solemnly enjoined upon all loyal citizens of the Philippines full respect for and obedience to the Constitution of the Commonwealth of the Philippines and the laws, regulations and other acts of their duly constituted government. This is all-inclusive—it comprises not only the loyal citizens in the liberated areas but also those in areas still under enemy occupation and control. It will be noticed that the complaint in said civil case No. 3012 was filed

twenty-six days after the above-quoted proclamation of General of the Army MacArthur. If the parties to said case were to consider the proceedings therein up to the date of the liberation of Manila valid and binding, they would hardly be complying with the severe injunction to render full respect for and obedience to our Constitution and the laws, regulations and other acts of our duly constituted government from October 23, 1944, onwards. Indeed, to my mind, in choosing between these two courses of action, they would be dangerously standing on the dividing line between loyalty and disloyalty to this country and its government.

The proceedings in question, having been had before the liberation of Manila, were unquestionably "processes" of the Japanese-sponsored government in the Philippines within the meaning of the aforesaid proclamation of General of the Army MacArthur and, consequently, fall within the condemnation of the proclamation. Being processes of a branch of a government which had been established in hostility to the Commonwealth Government, as well as the United States Government, they could not very well be considered by the parties to be valid and binding, at least after October 23, 1944, without said parties incurring in disobedience and contempt of the proclamation which enjoins them to render full respect for and obedience to our Constitution and the laws, regulations and other acts of our duly constituted government. Nine days after the inauguration of the so-called "Republic of the Philippines," President Franklin Delano Roosevelt of the United States declared in one of his most memorable pronouncements about the activities of the enemy in the Philippines, as follows:

"On the fourteenth of this month, a puppet government was set up in the Philippine Islands with Jose P. Laurel, formerly a justice of the Philippine Supreme Court, as 'president.' Jorge Vargas, formerly a member of the Philippine Commonwealth Cabinet and Benigno Aquino, also formerly a member of that cabinet, were closely associated with Laurel in this movement. The first act of the new puppet regime was to sign a military alliance with Japan. The second act was a hypocritical appeal for American sympathy which was made in fraud and deceit, and was designed to confuse and mislead the Filipino people.

"I wish to make it clear that neither the former collaborationist 'Philippine Executive Commission' nor the present 'Philippine Republic' has the recognition or sympathy of the Government of the United States. * * *

"Our sympathy goes out to those who remain loyal to the United States and the Commonwealth—that great majority of the Filipino people who have not been deceived by the promises of the enemy.

"October 23, 1943.

"FRANKLIN DELANO ROOSEVELT

"President of the United States"

(Prom U. S. Naval War College International Law Documents, 1943, pp. 93, 94.)

It is a fact of contemporary history that while President Manuel L. Quezon of the Philippines was in Washington, D. C., with his exiled government, he also repeatedly condemned both the "Philippine Executive Commission" and the "Philippine Republic" as they had been established by or under orders of the Commander in Chief of the Imperial Japanese Forces. With these two heads of the Governments of the United States and the Commonwealth of the Philippines condemning the "puppet régime" from its very inception, it is beyond my comprehension to see how the proceedings in question could be considered valid and binding without adopting an attitude incompatible with theirs. As President Roosevelt said in his above quoted message, "Our sympathy goes out to those who remain loyal to the United States and the Commonwealth—that great majority of the Filipino people who have not been deceived by the promises of the enemy.

The most that I can concede is that while the Japanese Army of occupation was in control in the Islands and their paramount military strength gave those of our people who were within their reach no other alternative, these had to obey their orders and decrees, but the only reason for such obedience would be that paramount military strength

and not any intrinsic legal validity in the enemy's orders and decrees. And once that paramount military strength disappeared, the reason for the obedience vanished, and obedience should likewise cease.

As was stated by the Supreme Court of the United States in the case of *Williams vs. Bruffy* (96 U. S., 176; 24 Law. ed., 719), "In the face of an overwhelming force, obedience in such matters may often be a necessity and, in the interest of order, a duty. No concession is thus made to the rightfulness of the authority exercised" (Italics ours.) The court there refers to its own former decision in *Thorington vs. Smith*, and makes it clear that the doctrine in the *Thorington* case, so far as the effects of the acts of the provisional government maintained by the British in Castine, from September, 1814 to the Treaty of Peace in 1815, and the consideration of Tampico as United States territory, were concerned, was limited to the period during which the British, in the first case, retained possession of Castine, and the United States, in the second, retained possession of Tampico. In referring to the Confederate Government during the Civil War, as mentioned in the *Thorington* case, the court again says in effect that the actual supremacy of the Confederate Government over a portion of the territory of the Union was the only reason for holding that its inhabitants could not but obey its authority. But the court was careful to limit this to the time when that actual supremacy existed, when it said: "* * * individual resistance to its authority then would have been futile and, therefore, unjustifiable." (Italics ours.)

Because of its pertinence, we beg leave to quote the following paragraph from that leading decision:

"There is nothing in the language used in *Thorington vs. Smith* (supra), which conflicts with these views. In that case, the Confederate Government is characterized as one of paramount force, and classed among the governments of which the one maintained by great Britain in Castine, from September, 1814, to the Treaty of Peace in 1815, and the one maintained by the United States in Tampico, during our War with Mexico, are examples. Whilst the British retained possession of Castine, the inhabitants were held to be subject to such laws as the British Government chose to recognise and impose. Whilst the United States retained possession of Tampico, it was held that it must be regarded and respected as their territory. The Confederate Government, the court observed, differed from these temporary governments in the circumstance that its authority did not originate in lawful acts of regular war; but it was not, on that account, less actual or less supreme; and its supremacy, while not justifying acts of hostility to the United States, 'Made obedience to its authority in civil and local matters not only a necessity, but a duty.' All that was meant by this language was, that as the actual supremacy of the Confederate Government existed over certain territory, individual resistance to its authority then would have been futile and, therefore, unjustifiable. In the face of an overwhelming force, obedience in such matters may often be a necessity and, in the interest of order, a duty. No concession is thus made to the rightfulness of the authority exercised." (*Williams vs. Bruffy*, 24 Law ed., 719; italics ours.)

The majority opinion, in considering valid the proceedings in question, invokes the rule that when a belligerent army occupies a territory belonging to the enemy, the former, through its Commander in Chief, has the power to establish thereon what the decisions and treaties have variously denominated provisional or military government, and the majority holds that the Japanese-sponsored government in the Philippines was such a government. Without prejudice to later discussing the effects which the renunciation of war as an instrument of national policy contained in our Commonwealth Constitution, as well as in the Briand-Kellog Pact, must have produced in this rule in so far as the Philippines is concerned, let us set forth some considerations apropos of this conclusion of the majority. If the power to establish here such a provisional government is recognized in the Commander in Chief of the invasion army, why should we not recognize at least an equal power in the Commander in Chief of the liberation army to overthrow that government with all of its acts, at least those of an executory nature upon the time of liberation? Considering the theory maintained by the majority, it would seem that they would recognize in the Japanese Commander in Chief the power to overthrow the Commonwealth Government, and all of its acts and institutions if he had chosen to. Why should at least an equal power be denied the Commander in Chief of the United States Army to overthrow the substitute government thus erected by the enemy with all of its acts and

institutions which are still not beyond retrieve? Hereafter we shall have occasion to discuss the aspects of this question from the point of view of policy or the practical convenience of the inhabitants. If the Japanese Commander in Chief represented the sovereignty of Japan, the American Commander in Chief represented the sovereignty of the United States, as well as the Government of the Commonwealth. If Japan had won this war, her paramount military supremacy would have continued to be exerted upon the Filipino people, and out of sheer physical compulsion this country would have had to bow to the continuance of the puppet regime that she had set up here for an indefinite time. In such a case, we admit that, not because the acts of that government would have intrinsically been legal and valid, but simply because of the paramount military force to which our people would then have continued to be subjected, they would have had to recognize as binding and obligatory the acts of the different departments of that government. But fortunately for the Filipinos and for the entire civilized world, Japan was defeated. And I now ask: Now that Japan has been defeated, why should the Filipinos be still bound to respect or recognize validity in the acts of the Japanese-sponsored government which has been so severely condemned by both the heads of the United States and our Commonwealth Government throughout the duration of the war? If we were to draw a parallel between that government and that which was established by the Confederate States during the American Civil War, we will find that both met with ultimate failure. And, in my opinion, the conclusion to be drawn should be the same in both cases.

As held by the United States Supreme Court in *Williams vs. Bruffy* (supra), referring to the Confederate Government, its failure carried with it the dissipation of its pretensions and the breaking down in pieces of the whole fabric of its government. The Court said among other things:

"The immense power exercised by the government of the Confederate States for nearly four years, the territory over which it extended, the vast resources it wielded, and the millions who acknowledged its authority, present an imposing spectacle well fitted to mislead the mind in considering the legal character of that organization. It claimed to represent an independent nation and to possess sovereign powers; and as such to displace the jurisdiction and authority of the United States from nearly half of their territory and, instead of their laws, to substitute and enforce those of its own enactment. Its pretensions being resisted, they were submitted to the arbitrament of war. In that contest the Confederacy failed; and in its failure its pretensions were dissipated, its armies scattered, and the whole fabric of its government broken in pieces." (24 Law, ed., 719; italics ours.)

By analogy, if the Japanese invasion and occupation of the Philippines had been lawful—which, however, is not the case—and if Japan had succeeded in permanently maintaining the government that she established in the Philippines, which would have been the case had victory been hers, there would be more reason for holding the acts of that government valid, but because Japan has lost the war and, therefore, failed in giving permanence to that government, the contrary conclusion should legitimately follow.

The validity of legislation exercised by either contestant "depends not upon the existence of hostilities but upon the ultimate success of the party by which it is adopted" (italics ours.) And, referring to the overthrow of the Confederacy, the Court, said, "when its military forces were overthrown, it utterly perished, and with it all its enactments" (italics ours).

The majority cite on pages 9-10 of their opinion a passage from the same case of *William vs. Bruffy*, supra, which is a mere obiter dictum. The majority opinion says that in this passage the Court was "discussing the validity of the acts of the Confederate States". In the first place, an examination of the decision will reveal that the controversy dealt with an act of the Confederate Government, not of the Confederate States individually; and in the second place, the quoted passage refers to something which was not in issue in the case, namely, the acts of the individual States composing the Confederacy. But even this passage clearly places the case at bar apart from the Court's pronouncement therein. The quoted passage commences by stating that "The same general form of government, the same general laws for the administration of justice and the protection of private rights, which has

existed in the States prior to the rebellion, remanded during the (its) continuance and afterwards." In the case at bar, the same general form of the Commonwealth Government did not continue under the Japanese, for the simple reason that one of the first acts of the invaders was to overthrow the Commonwealth Constitution and, therefore, the constitutional government which existed thereunder, as an effect of the following acts and decrees of the Commander in Chief of the Imperial Japanese Forces;

1. Order No. 3, dated February 20, 1942 of the Commander in Chief of the Imperial Japanese Forces to the Chairman of the Philippine Executive Commission directed that, in the exercise of legislative, executive and judicial powers in the Philippines, the "activities" of the "administrative organs and judicial courts in the Philippines shall be based upon the existing status, orders, ordinances and the Commonwealth Constitution (1 Official Journal of the Japanese Military Administration, page 34). Under the frame of government existing in this Commonwealth upon the date of the Japanese invasion, the Constitution was the very fountain-head of the validity and effects of all the "status, orders, and ordinances" mentioned by the Japanese Commander in Chief, and in overthrowing the Constitution he, in effect, overthrew all of them.

2. Instruction No. 6 of the Japanese Military Administration (Vol. 1, uages 36 et seq., Official Gazette, edited at the Office of the Executive Commision) gave the "Detailed Instruction Based on Guiding Principle of Administration," and among other things required "The entire personnel shall be required to pledge their loyalty to the Imperial Japanese Forces * * *." (This, of course, was repugnant to the frame of government existing here under the Commonwealth Constitution upon the date of invasion.)

3. Proclamation dated January 3, 1942 of the Japanese Commander in Chief provided in paragraph 3 that "The Authorities and the People of the Commonwealth should sever their relations with the U. S. ó * *" (This is, likewise, repugnant to the Commonwealth Constitution and to the Government of that Commonwealth which was expressly made subject to the supreme sovereignty of the United States until complete independence is granted, not by the mere will of the United States, but by virtue of an agreement between that Government and ours, under the Tydings-McDuffie Act.)

The individual States of the Confederate and their governments existed prior to the Civil War and had received the sanction and recognition of the Union Government, for which the Federal Supreme Court was speaking in the Williams-Bruffy case; while the Japanese-sponsored governments of the "Philippine Executive Commission" and the Republic of the Philippines" neither existed here before the war nor had received the recognition or sanction of either the United States or the Commonwealth Government—nay, they had received the most vigorous condemnation of both.

The Court further says in Williams vs. Bruffy (supra):

"No case has been cited in argument, and we think unsuccessfully attempting to establish a separate revolutionary government have been sustained as a matter of legal right. As justly observed by the late Chief Justice in the case of Shortridge vs. Macon, 1 Abb. U. S., 68, decided at the circuit, and, in all material respects like the one at bar, 'Those who engage in rebellion must consider the consequences. If they succeed, rebellion becomes revolution, and the new government will justify its founders. If they fail, all their acts hostile to the rightful government are violations of law, and originate no rights which can be recognized by the courts of the nation whose authority and existence have been alike assailed.' S. C., Chase, Dec, 136." (Williams vs. Bruffy, 96 U. S., 176; 24 Law. ed., 716, 718.) (Italics ours.)

I am of opinion that the principles thus enunciated for the case of an unsuccessful rebellion should be applied with greater force to the case of a belligerent who loss the war. And since the founding of the Japanese-sponsored government in the Philippines was designed to supplant and did actually supplant the rightful government and since all its acts could not but be hostile to the latter (however blameless the officials who acted under enemy

duress might be), and since Japan failed, all said acts, particularly those of the Japanese-sponsored court in said civil case No. 3012, "are violations of law, and originate no rights which can be recognized by the courts of the nation whose authority and existence have been alike assailed", quoting the language of the court in *Shortridge vs. Macon*, cited by Mr. Justice Field in *Williams vs. Bruffy*, *supra* (24 Law. ed., 718).

II

(a) The government styled as, first, the "Philippine Executive Commission" and later as the "Republic of the Philippines", established here by the Commander in Chief of the Imperial Japanese Forces or by his order was not a de facto government—the so-called Court of First Instance of Manila was not a de facto court, and the judge who presided it was not a de facto judge;

(b) The rules of International Law regarding the establishment of a de facto government in territory belonging to a belligerent but occupied or controlled by an opposing belligerent are inapplicable to the governments thus established here by Japan.

Under the doctrine of *Williams vs. Bruffy*, *supra*, and the pertinent cases therein cited, the short-lived provisional government thus established by the Japanese in the Philippines should be classified, at best, as a government of paramount force. But this is not all. The Constitution of this Commonwealth which has been expressly approved by the United States Government, in Article II, section 3, under the heading "Declaration of Principles", renounces war as an instrument of national policy. This renunciation of war as an instrument of national policy follows an equal renunciation in the Briand-Kellog Pact. The rules of International Law, cited in support of the power or right of a belligerent army of Occupation to set up a provisional government on occupied enemy territory, were evolved prior to the first World War, but the horrors and devastations of that war convinced, at least the governments of the United States and France, that they should thereafter renounce war as an instrument of national policy, and they consequently subscribed the Briand-Kellog Pact. Those horrors and devastations were increased a hundredfold, if not more, in this second World War, but even before this war occurred, our own people, through our Constitutional delegates, who framed the Commonwealth Constitution also adopted the same doctrine, and embodied an express renunciation of war as an instrument of national policy in the instrument that they drafted. It is true that in section 3, Article II, above-cited, our Constitution adopts the generally accepted principles of International Law as a part of the law of the Nation. But, of course, this adoption is exclusive of those principles of International Law which might involve recognition of war as an instrument of national policy. It is plain that on the side of the Allies, the present war is purely defensive. When Japan started said war, treacherously and without previous declaration, and attacked Pearl Harbor and the Philippines on those two fateful days of December 7 and 8, 1941, she employed war as an instrument of her national policy. Under the Briand-Kellog Pact and our Commonwealth Constitution, the United States and the Commonwealth Government could not possibly have recognized in Japan any right, as against them, to employ that war as an instrument of her national policy, and, consequently, they could not have recognized in Japan the power to set up in the Philippines the puppet government that she later set up, because such power would be a mere incident or consequence of the war itself. The authorities agree that such a power, under the cited rules, is said to be a right derived from war. (67 C. J. p. 421, sec. 171.) There can be no question that the United States and the Commonwealth Governments were free to refuse to be bound by those rules when they made their respective renunciations above referred to. Indeed, all the United Nations have exercised this free right in their Charter recently signed at San Francisco.

As a necessary consequence of this, those rules of International Law were no longer applicable to the Philippines and to the United States at the time of the Japanese invasion and as a corollary, it follows that we have no legal foundation on which to base the proposition that the acts of that Japanese-sponsored government in the Philippines were valid and binding. Moreover, I am of opinion, that although at the time of the Japanese invasion

and up to the present, the United States retains over the Philippines, a certain measure of sovereignty, it is only for certain specified purposes enumerated in the Tydings-McDuffie Act and the Commonwealth Constitution. (Ordinance appended to the Constitution.) And our territory was at the time of the Japanese invasion not a territory of the United States, within the meaning of the laws of war governing war-like operations on enemy territory. Our territory is significantly called "The National Territory" in Article I of our Constitution and this bears the stamp of express approval of the United States Government. The Philippines has been recognized and admitted as a member of the United Nations. We, therefore, had our own national and territorial identity previous to that invasion. Our nation was not at war with Japan and has never been. The Japanese, themselves, were proclaiming to the world that they were not at war with the Filipinos. And in line with this, the Japanese army, in time, released Filipino war prisoners captured in Bataan. Lt. Gen. Maeda, Chief of Staff, Imperial Japanese Forces, in his speech of January 2, 1942, said:

"* * * we had not the slightest intentions to make your people our enemy; rather we considered them as our friends who will join us hand-in-hand in the establishment of an orderly Greater East Asia * * *." (Official Gazette, edited at the Office of the Executive Commission, Vol. I, p. 65.)

If the Philippines was a neutral territory when invaded by the Japanese, the following principles from Lawrence, *International Law* (7th ed.), p. 603, are pertinent:

"The Duties of Belligerent States Towards Neutral States.—* * * To refrain from carrying on hostilities within neutral territory.—We have already seen that, though this obligation was recognized in theory during the infancy of International law, it was often very imperfectly observed in practice. But in modern times it has been strictly enforced, and any State which knowingly ordered warlike operations to be carried on in neutral territory, * * * would bring down upon itself the reprobation of civilized mankind. Hostilities may be carried on in the territory of either belligerent, on the high seas, and in territory belonging to no one. Neutral land and neutral territorial waters are sacred. No acts of warfare may lawfully take place within them. * * *" (Italics ours.)

In all the cases and authorities supporting the power or right to set up a provisional government, the belligerent had the right to invade or occupy the territory in the first instance. Such was not the case with the Philippines. President Roosevelt, in his message to the Filipino people, soon after the landing of American Forces in Leyte, on October 20, 1944, characterized Japan's invasion and occupation of the Philippines as "the barbarous, unprovoked and treacherous attack upon the Philippines," and he announced the American people's "firm determination to punish the guilty," (41 Off. Gaz., 149.) (Italic ours.) The illustrious leader of the United Nations could not have declared in more unmistakable terms the utter illegality of that invasion and occupation. If the establishment of a provisional government in occupied territory by a belligerent is "a mere application or extension of the force by which the invasion or occupation was effected" (67 C. J., p. 421, sec. 171), the illegality of the invasion, would necessarily permeate the government, which was its mere application or extension.

The fact that shortly before December 8, 1941, the date of the "barbarous, unprovoked and treacherous attack," the meager and almost untrained forces of the Philippine Army had been inducted into the American Army, did not change the neutral status of the Philippines. That military measure had been adopted for purely defensive purposes. Nothing could be farther from the minds of the government and military leaders of the United States and the Philippines in adopting it than to embark upon any aggressive or warlike enterprise against any other nation. It is an old and honored rule dating as far back as the 18th century that even solemn promises of assistance made before the war by a neutral to a nation which later becomes a belligerent, would not change the status of the neutral even if such promises were carried out, so long as they were made for purely defensive purposes. In the words of Vattel "when a sovereign furnishes the succor due in virtue of a former defensive alliance, he does not associate himself in the war. Therefore he may fulfill his engagements and yet preserve an exact neutrality."

(Lawrence, Principles of International Law [7th ed.], pp, 585, 586.)

If the Filipinos had, from contemptible cowardice and fear, allowed their shores to be invaded, and their territory occupied by the Japanese without resistance, such invasion and occupation would undoubtedly have been considered in violation of International Law. Should the Filipinos be punished for having had the patriotism, bravery, and heroism to fight in defense of the sacredness of their land, the sanctity of their homes, and the honor and dignity of their government, by giving validity, in whatever limited measure, to the lawless acts of the ruthless enemy who thus overran their country, and robbed them of the tranquility and happiness of their daily lives? And yet, to my mind, to give any measure of validity or binding effect to the proceedings of the Japanese-sponsored Court of First Instance of Manila, involved herein, would be to give that much validity or effect to the acts of those same invaders. To equalize the consequences of a lawful and a wrongful invasion of occupation, would be to equalize right and wrong, uphold the creed that might makes right, and adopt "the law of the jungle."

If said Japanese-sponsored government was not a de facto government, it would seem clearly to follow that its "Court of First Instance of Manila" was not a de facto court. But it should additionally be stated that for it to be a de facto court, its judge had to be a de facto judge, which he could not be, as presently demonstrated.

As said by President Osmeña, in replying to the speech of General of the Army MacArthur when the latter turned over to him the full powers and responsibilities of the Commonwealth Government, on February 27, 1945:

* * * * *

"The time has come when the world should know that when our forces surrendered in Bataan and Corregidor, resistance to the enemy was taken up by the people itself—resistance which was inarticulate and disorganized in its inception but which grew from day to day and from island to island, until it broke out into an open warfare against the enemy.

"The fight against the enemy was truly a people's war because it counted with the wholehearted support of the masses. From the humble peasant to the barrio school teacher, from the volunteer guard to the women's auxiliary service units, from the loyal local official to the barrio folk—each and every one of those contributed his share in the great crusade for liberation.

"The guerrillas knew that without the support of the civilian population, they could not survive. Whole towns and villages dared enemy reprisal to oppose the hated invader openly or give assistance to the underground movement * * * ." (41 Off. Gaz., 88, 89.)

Under these facts, taken together with General of the Army MacArthur's accurate statement that the "Republic of the Philippines" had been established under enemy duress, it must be presumed—to say the least—that the judge who presided over the proceedings in question during the Japanese occupation, firstly, accepted his appointment under duress; and secondly, acted by virtue of that appointment under the same duress. In such circumstances he could not have acted in the bona fide belief that the new "courts" created by or under the orders of the Japanese Military Commander in Chief had been legally created—among them the "Court of First Instance of Manila,"—that the Chairman of the "Philippine Executive Commission" or the President of the "Republic of the Philippines", whoever appointed him, had conferred upon him a valid title to his office and a legitimate jurisdiction to act as such judge. Good faith is essential for the existence of a de facto judge (*Tayko vs. Capistrano*, 53 Phil., 866, 872). The very idea of enemy duress would necessarily imply that but for the duress exerted upon him by the enemy he would have refused to accept the appointment and to act thereunder. And why? Because he must be presumed to know that the office to which he was thus appointed had been created by the enemy in open defiance of the Commonwealth Constitution and the laws and regulations promulgated by our Commonwealth Government, and

that his acceptance of said office and his acting therein, if willfully done, would have been no less than an open hostility to the very sovereignty of the United States and to the Commonwealth Government, and a renunciation of his allegiance to both. There is no middle ground here. Either the judge acted purely under duress, in which case his acts would be null and void; or maliciously in defiance of said governments, in which case his acts would be null and void for more serious reasons.

The courts created here by the Japanese government had to look for the source of their supposed authority to the orders of the Japanese Military Commander in Chief and the so-called Constitution of the "Republic of the Philippines," which had been adopted in a manner which would shock the conscience of democratic peoples, and which was designed to supplant the Constitution which had been duly adopted by the Filipino people in a Constitutional Convention of their duly elected Constitutional Delegates. And it was decreed that the Commander in Chief of the Imperial Japanese Forces "shall exercise jurisdiction over judicial courts." (Vol. 1, p. 7, Official Journal of the Japanese Military Administration, cited on pp. 2, 3, of the order of the respondent judge complained of and marked Exhibit H of the petition for mandamus.) How can our present courts legitimately recognize any efficacy in the proceedings of such an exotic judicial system, wherein the Commander in Chief of the Imperial Japanese Forces possessed the highest judicial jurisdiction?

III

The courts of those governments were entirely different from our Commonwealth courts before and after the Japanese occupation.

Executive Order No. 36 of the President of the Philippines, dated March 10, 1945, in its very first paragraph, states the prime concern of the government "to re-establish the courts as fast as provinces are liberated from the Japanese occupation." If the courts under the Japanese-sponsored government of the "Republic of the Philippines" were the same Commonwealth courts that existed here under the Constitution at the time of the Japanese invasion, President Osmeña would not be speaking of re-establishing those courts in his aforesaid Executive Order. Forsooth, how could those courts under the "Republic of the Philippines" be the courts of the Commonwealth of the Philippines when they were not functioning under the Constitution of the Commonwealth and the laws enacted in pursuance of said Constitution? The jurisdiction of the Commonwealth courts was defined and conferred under the Commonwealth Constitution and the pertinent legislation enacted there-under, that of the Japanese-sponsored courts was defined and conferred by the orders and decrees of the Japanese Commander in Chief, and, perhaps, the decrees of the "Philippine Executive Commission" and the laws of the so-called Legislature under the Republic, which was not composed of the elected representatives of the people. The Justices and Judges of the Commonwealth courts had to be appointed by the President of the Commonwealth with confirmation by the Commission on Appointments, pursuant to the Commonwealth Constitution. The Chief Justice of the Supreme Court, under the "Philippine Executive Commission" was appointed by the Commander in Chief of the Imperial Japanese Forces, and the Associate Justices of the Supreme Court, the Presiding Justice and Associate Justices of the Court of Appeals, the Judges of First Instance and of all inferior courts were appointed by the Chairman of the Executive Commission, at first, and later, by the President of the Republic, of course, without confirmation by the Commission on Appointments under the Commonwealth Constitution. The Chief Justice and Associate Justices of the Supreme Court, the President and Associate Justices of the Court of Appeals, and the Judges of First Instance and of all inferior courts in the Commonwealth judicial system, had to swear to support and defend the Commonwealth Constitution, while this was impossible under that Japanese-sponsored government. In the Commonwealth judicial system, if a Justice or Judge should die or be incapacitated to continue in the discharge of his official duties, his successor was appointed by the Commonwealth President with confirmation by the Commission on Appointments, and said successor had to swear to support and defend the Commonwealth Constitution; in the exotic judicial system implanted here by the Japanese, if a Justice or Judge

should die or be so incapacitated, his successor would be appointed by the Japanese Commander in Chief, if the dead or incapacitated incumbent should be the Chief Justice of the Supreme Court, or otherwise, by the Chairman of the "Executive Commission" or the President of the "Republic", of course without confirmation by the Commission on Appointments of the Commonwealth Congress, and, of course, without the successor swearing to support and defend the Commonwealth Constitution.

If, as we believe having conclusively shown, the Japanese-sponsored courts were not the same Commonwealth courts, the conclusion is unavoidable that any jurisdiction possessed by the former and any cases left pending therein, were not and could not be automatically transferred to the Commonwealth courts which were re-established under Executive Order No. 36. For this purpose, a special legislation was necessary.

Executive Order No. 37, in my humble opinion, does not, as held by the majority, imply that the President recognized as valid the proceedings in all cases appealed to the Court of Appeals. Section 2 of that order simply provides that all cases which have been duly appealed to the Court of Appeals shall be transmitted to the Supreme Court for final decision. The adverb "duly" would indicate that the President foresaw the possibility of appeals not having been duly taken. All cases appealed to the Court of Appeals before the war and otherwise duly appealed, would come under the phrase "duly appealed" in this section of the Executive Order. But considering the determined and firm attitude of the Commonwealth Government towards those Japanese-sponsored governments since the beginning, it would seem inconceivable that President Osmeña, in section 2 of Executive Order No. 37, intended to include therein appeals taken to the Japanese-sponsored Court of Appeals, or from the Japanese-sponsored inferior courts. It should be remembered that in the Executive Order immediately preceding and issued on the same date, the said President speaks of re-establishing the courts as fast as provinces were liberated from the Japanese occupation.

IV

The question boils down to whether the Commonwealth Government, as now restored, is to be bound by the acts of either or both of those Japanese-sponsored governments.

In the last analysis, in deciding the question of validity or nullity of the proceedings involved herein, we are confronted with the necessity to decide whether the Court of First Instance of Manila and this Supreme Court, as re-established under the Commonwealth Constitution, and the entire Commonwealth Government, are to be bound by the acts of the said Japanese-sponsored court and government. To propound this question is, to my mind, to answer it most decidedly in the negative, not only upon the ground of legal principles but also for reasons of national dignity and international decency. To answer the question in the affirmative would be nothing short of legalizing the Japanese invasion and occupation of the Philippines. Indeed, it would be virtual submission to the dictation of an invader our people's just hatred of whom gave rise to the epic Philippine resistance movement, which has won the admiration of the entire civilized world.

IV

Even considerations of policy or practical convenience militate against petitioner's contention.

In this connection, the respondent judge, in his order of June 6, 1945, complained of, has the following to say:

"It is contended, however, that the judicial system implanted by the Philippine Executive Commission and the Republic was the same as that of the Commonwealth prior to Japanese occupation; that the laws administered and enforced by said courts during the existence of said regime were the same laws on the statute books of the Commonwealth before Japanese occupation, and that even the judges who presided them were, in many instances, the same persons who held the position prior to Japanese occupation. All this may be true, but other facts are just as stubborn and pitiless. One of them is that said courts were of a government alien to the

Commonwealth Government. The laws they enforced were, true enough, laws of the Commonwealth prior to Japanese occupation, but they had become the laws—and the Courts had become the institutions—of Japan by adoption (U. S. vs. Reiter, 27 F. Case No. 16, 146), as they became later on the laws and institutions) of the Philippine. Executive Commission and the Republic of the Philippines. No amount of argument or legal fiction can obliterate this fact."

Besides, I am of the opinion that the validity of the acts of the courts in the "judicial system implanted by the Philippine Executive Commission and the Republic" would not depend upon the laws that they "administered and enforced", but upon the authority by virtue of which they acted. If the members of this Court were to decide the instant case in strict accordance with the Constitution and laws of the Commonwealth but not by the authority that they possess in their official capacity as the Supreme Court of the Philippines, but merely as lawyers, their decision would surely be null and void. And yet, I am firmly of opinion that whoever was the "judge" of the Japanese-sponsored Court of First Instance of Manila who presided over the said court when the proceedings and processes in dispute were had, in acting by virtue of the supposed authority which he was supposed to have received from that government, did so with no more legal power than if he had acted as a mere lawyer applying the same laws to the case. If duplication of work or effort, or even if confusion, should be alleged to possibly arise from a declaration of nullity of judicial proceedings had before those Japanese-sponsored courts, it should suffice to answer that the party so complaining in voluntarily resorting to such courts should be prepared to assume the consequences of his voluntary act. On the other hand, his convenience should not be allowed to visit upon the majority of the inhabitants of this country, the dire consequences of a sweeping and wholesale validation of judicial proceedings in those courts. Let us set forth a few considerations apropos of this assertion. It is a fact of general knowledge that during the Japanese occupation of the Philippines, the overwhelming majority of our people and other resident inhabitants were literally afraid to go to any place where there were Japanese sentries, soldiers or even civilians, and that these sentries were posted at the entrance into cities and towns and at government offices; that the feared Japanese "M.P.'s" or "Kempeitai's" were a constant terror to them; and lastly, that the greater number who lived or had evacuated to places far from the Japanese, were also afraid of the fifth columnists who, unfortunately, were found precisely in the cities and towns where the courts were located; and as a consequence, the great majority of the people were very strongly averse to traveling any considerable distance from their homes and were, one might say, in constant hiding. Add to these circumstances, the fact of the practical absence of transportation facilities and the no less important fact of the economic structure having been so dislocated as to have impoverished the many in exchange for the enrichment of the few—and we shall have a fair picture of the practical difficulties which the ordinary litigant would in those days have encountered in defending his rights against anyone of the favored few who would bring him to court. It should be easy to realize how hard it was for instance, to procure the attendance of witnesses, principally because of the fact that most of them were in hiding or, at least, afraid to enter the cities and towns, and also because of the generally difficult and abnormal conditions prevailing. Under such conditions, cases of denial of a party's day in court, as known in our constitutional government, were to be expected. Such denial might arise from many a cause. It might be the party's fear to appear before the court because in doing so, he would have had to get near the feared Japanese. It might be because he did not recognize any legal authority in that court, or it might be his down-right repugnance of the hated enemy. And I dare say that among such people would be found more than seventeen million of the eighteen million Filipinos. These are but a few of countless causes. So that if some form of validation of such judicial proceedings were to be attempted, all necessary safeguards should be provided to avoid that in any particular case the validation should violate any litigant's constitutional right to his day in court, within the full meaning of the phrase, or any other constitutional or statutory right of his. More people, I am afraid, would be prejudiced than would be benefited by a wholesale validation of said proceedings.

Much concern has been shown for the possible confusion which might result from a decision declaring null and

void the acts processes of the Japanese-sponsored governments in the Philippines. I think, this aspect of the question has been unduly stressed. The situation is not without remedy, but the remedy lies with the legislature and not with the courts. As tie courts cannot create a new or special jurisdiction for themselves, which is a legislative function, and as the situation demands such new or special jurisdiction, let the legislature act in the premises. For instance, the Congress may enact a law conferring a special jurisdiction upon the courts of its selection, whereby said courts may, after hearing all the parties interested, and taking all the necessary safeguards, so that, a party's day in court or other constitutional or statutory right under the Commonwealth Government should not be prejudiced by any of said acts, processes or proceeding's, particularly, those in the Japanese-sponsored courts, and subject to such other conditions as the special law, may provide, validate the corresponding acts, processes or proceedings. This, to my mind, would be more conducive to a maximum of benefit and a minimum of prejudice to the inhabitants of this country, rather than the procedure favored by the majority.

Finally, let us not equalize the conditions then prevailing in Manila to that prevailing in the provinces, where the greater number of the people were then living outside the towns, in the farms and the hills. These people constitute the great majority of the eighteen million Filipinos. To them the semblance of an administration of justice which the Japanese allowed, was practically unknown. But they constituted the majority of loyal citizens to whom President Roosevelt's message of October 23, 1943 refers. They—the majority of our people—had an unshaken faith in the arrival of American aid here and the final triumph of the Allied cause. They were willing to wait for the restoration of their rightful government, with its courts and other institutions, for the settlement of their differences. Nay, in their common hardships and sufferings under the yoke of foreign oppression, they had not much time to think of such differences, if they did not utterly forget them. Their undoubted hatred of the invader was enough to keep them away from the judicial system that said invader allowed them to have. Those who voluntarily went to the courts in those tragic days belong to the small minority.

As to public order—why! any public order which then existed was not due to the courts or other departments of the puppet government. It was maintained at the point of the bayonet by the Japanese army, and in their own unique fashion.

Writ granted.

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