

JOSE AVELINO, PETITIONER, VS. MARIANO J. CUENCO, RESPONDENT.

G.R. No. L-2821. March 04, 1949

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In G. R. No. L-2821, Avelino vs. Cuenco, the Court by a vote of six justices against four resolved to deny the petition.

Without prejudice to the promulgation of a more extended opinion, this is now written briefly to explain the principal grounds for the denial.

The Court believes the following essential facts have been established:

In the session of the Senate of February 18, 1949, Senator Lorenzo M. Tañada requested that his right to speak on the floor on the next session day, February 21, 1949, to formulate charges against the then Senate President Jose Avelino be reserved. His request was approved.

On February 21, 1949, hours before the opening of the session Senator Tañada and Senator Prospero Sanidad filed with the Secretary of the Senate a resolution enumpvsi+inoflinrcps against, the then Senate President and

Although a sufficient number of senators to constitute a quorum were at the Senate session hall at the appointed time (10:00 A. M.), and the petitioner was already in his office, said petitioner delayed his appearance at the session hall until about 11:35 A. M. When he finally ascended the rostrum, he did not immediately open the session, but instead requested from the Secretary a copy of the resolution submitted by Senators Tañada and Sanidad and in the presence of the public he read slowly and carefully said resolution, after which he called and conferred with his colleagues Senators Francisco and Tirona.

Shortly before 12:00 noon, due to the insistent requests of Senators Sanidad and Cuenco that the session be opened, the petitioner finally called the meeting to order. Except Senator Sotto who was confined in a hospital and Senator Confesor who is in the United States, all the Senators were present.

Senator Sanidad, following a long established practice, moved that the roll call be dispensed with, but Senator Tirona opposed said motion, obviously in pursuance of a premeditated plan of petitioner and his partisans to make use of dilatory tactics to prevent Senator Tañada from delivering his privilege speech. The roll was called.

Senator Sanidad next moved, as is the usual practice, to dispense with the reading of the minutes, but this motion was likewise opposed by Senators Tirona and David, evidently, again, in pursuance of the above-mentioned conspiracy.

Before and after the roll call and before and after the reading of the minutes, Senator Tañada repeatedly stood up to claim his right to deliver his one-hour privilege speech but the petitioner, then presiding, continuously ignored him; and when after the reading of the minutes, Senator Tañada insisted on being recognized by the Chair, the petitioner announced that he would order the arrest of any senator who would speak without being previously of his follower, Senator Tirona, who was continuously shouting at Senator Sanidad "Out of order!" everytime the latter would ask for recognition of Senator Tañada.

At this juncture, some disorderly conduct broke out in the Senate gallery, as if by pre-arrangement. At about this same time Senator Pablo Angeles David, one of the petitioner's followers, was recognized by petitioner, and he moved for adjournment of session, evidently, again, in pursuance of the above-mentioned conspiracy to muzzle Senator Tañada.

Senator Sanidad registered his opposition to the adjournment of the session and this opposition was seconded by herein respondent who moved that the motion of adjournment be submitted to a vote. Another commotion ensued.

Senator David reiterated his motion for adjournment and herein respondent also reiterated his opposition to the adjournment and again moved that the motion of Senator David be submitted to a vote.

Suddenly, the petitioner banged the gavel and abandoning the Chair hurriedly walked out of the session hall followed by Senators David, Tirona, Francisco, Torres, Magalona and Clarin, while the rest of the senators remained. Whereupon Senator Melecio Arranz, Senate President Pro-Tempore, urged by those senators present took the Chair and proceeded with the session.

Senator Cabili stood up, and asked that it be made of record—it was so made—that the deliberate abandonment of the Chair by the petitioner, made it incumbent upon Senate President Pro-Tempore Arranz and the remaining members of the Senate to continue the session in order not to paralyze the functions of the Senate. Senate President Pro-Tempore Arranz then suggested that respondent be designated to preside over the session, which suggestion was carried unanimously. The respondent thereupon took the Chair.

Upon motion of Senator Arranz, which was approved, Gregorio Abad was appointed Acting Secretary, because the Assistant Secretary, who was then acting as Secretary, had followed the petitioner when the latter abandoned the session.

Senator Tañada, after being recognized by the Chair, was then finally able to deliver his privilege speech. Thereafter Senator Sanidad read aloud the complete text of said Resolution (No. 68), and submitted his motion for approval thereof and the same was unanimously approved.

With Senate President Pro-Tempore Arranz again occupying the Chair, after the respondent had yielded it to him, Senator Sanidad introduced Resolution No. 67, entitled "Resolution declaring vacant the position of the President of the Senate and designating the Honorable Mariano Jesus Cuenco Acting President of the Senate." Put to a vote, the said resolution was unanimously approved.

Senator Cuenco took the oath.

The next day the President of the Philippines recognized the respondent as acting president of the Philippine Senate.

By his petition in this quo warranto proceeding petitioner asks the Court to declare him the rightful President of the Philippine Senate and oust respondent.

The Court has examined all principal angles of the controversy and believes that these are the crucial points:

- Does the Court have jurisdiction over the subjectmatter?
- If it has, were resolutions Nos. 68 and 67 validly approved?
- Should the petition be granted?

To the first question, the answer is in the negative, in view of the separation of powers, the political nature of the controversy (*Alejandrino vs. Quezon*, 46 Phil., 83; *Vera vs. Avelino*, 77 Phil., 192; *Mabanag vs. Lopez Vito*, 78

Phil., 1) and the constitutional grant to the Senate of the power to elect its own president, which power should not be interfered with, nor taken over, by the judiciary. We refused to take cognizance of the Vera case even if the rights of the electors of the suspended senators were allegedly affected without any immediate remedy. A fortiori we should abstain in this case because the selection of the presiding officer affects only the Senators themselves who are at liberty at any time to choose their officers, change or reinstate them. Anyway, if, as the petition must imply to be acceptable, the majority of the Senators want petitioner to preside, his remedy lies in the Senate Session Hall—not in the Supreme Court.

The Court will not sally into the legitimate domain of the Senate on the plea that our refusal to intercede might lead into a crisis, even a revolution. No state of things has been proved that might change the temper of the Filipino people as a peaceful and law-abiding citizens. And we should not allow ourselves to be stampeded into a rash action inconsistent with the calm that should characterize judicial deliberations.

The precedent of *Werts vs. Rogers* does not apply, because among other reasons, the situation is not where two sets of senators have constituted themselves into two senates actually functioning as such, (as in the said *Werts* case), there being no question that there is presently one Philippine Senate only. To their credit be it recorded that petitioner and his partisans have not erected themselves into another Senate. The petitioner's claim is merely that respondent has not been duly elected in his place in the same one Philippine Senate.

It is furthermore believed that the recognition accorded by the Chief Executive to the respondent makes it advisable, more than ever, to adopt the hands-off policy wisely enunciated by this Court in matters of similar nature.

The second question depends upon these sub-questions. (1) Was the session of the so-called rump Senate a continuation of the session validly assembled with twenty two Senators in the morning of February 21, 1949?; (2) Was there a quorum in that session? Mr. Justice Montemayor and Mr. Justice Reyes deem it useless, for the present to pass on these questions once it is held, as they do, that the Court has no jurisdiction over the case. What follows is the opinion of the other four on those sub-questions.

Supposing that the Court has jurisdiction, there is unanimity in the view that the session under Senator Arranz was a continuation of the morning session and that a minority of ten senators may not, by leaving the Hall, prevent the other twelve senators from passing a resolution that met with their unanimous endorsement. The answer might be different had the resolution been approved only by ten or less.

If the rump session was not a continuation of the morning session, was it validly constituted? In other words, was there the majority required by the Constitution for the transaction of the business of the Senate? Justices Paras, Feria, Pablo and Bengzon say there was, firstly because the minutes say so, secondly, because at the beginning of such session there were at least fourteen senators including Senators Pendatun and Lopez, and thirdly because in view of the absence from the country of Senator Tomas Confesor twelve senators constitute a majority of the Senate of twenty three senators^ When the Constitution declares that a majority of "each House" shall constitute a quorum, "the House" does not mean "all" the members. Even a majority of all the members constitute "the House". (*Missouri Pac. vs. Kansas*, 63 Law ed. [U. S.], p. 239). There is a difference between a majority of "all the members of the House" and a majority of "the House", the latter requiring less number than the first. Therefore an absolute majority (12) of all the members of the Senate less one (23), constitutes constitutional majority of the Senate for the purpose of a quorum. Mr. Justice Pablo believes furthermore that even if the twelve did not constitute a quorum, they could have ordered the arrest of one, at least, of the absent members; if one had been so arrested, there would be no doubt Quorum then, and Senator Cuenco would have been elected just the same inasmuch as there would be eleven for Cuenco, one against and one abstained.

In fine, all the four justices agree that the Court being confronted with the practical situation that of the twentythree senators who may participate in the Senate deliberations in the days immediately after this decision, twelve senators will support Senator Cuenco and, at most, eleven will side with Senator Avelino, it would be most injudicious to declare the latter as the rightful President of the Senate, that office being essentially one that depends exclusively upon the will of the majority of the senators, the rule of the Senate about tenure of the President of that body being amendable at any time by that majority. And at any Session hereafter held with thirteen or more senators, in order to avoid all controversy arising from the divergence of opinion here about quorum and for the benefit of all concerned, the said twelve senators who approved the resolutions herein involved could ratify all their acts and thereby place them beyond the shadow of a doubt.

As already stated, the six justices hereinabove mentioned voted to dismiss the petition. Without costs.

CONCURRING AND DISSENTING

MORAN, C. J.:

I believe that this Court has jurisdiction over the case.[1] The present crisis in the Senate is one that imperatively calls for the intervention of this Court,

Respondent Cuenco cannot invoke the doctrine of noninterference by the courts with the Senate because the legal capacity of his group of twelve senators to act as a senate is being challenged by petitioner on the ground of lack of quorum (Attorney General ex rel. Werts vs. Rogers et al., 28 Atl. 726; 23 L. R. A., 354). If this group is found sufficient to constitute a quorum under the Constitution, then its proceedings should be free from interference. But if it is not possessed of a valid quorum, then its proceedings should be voided.

The issue as to the legal capacity of the Cuenco group to act as a senate cannot be considered a political question the determination of which devolves exclusively upon the Senate. That issue involves a constitutional question which cannot be validly decided either by the Cuenco group or by the Avelino group separately, for, if the Cuenco group has no quorum, the Avelino group has decidedly less. And for obvious reasons, the two groups cannot act together inasmuch as the members of the Avelino group, possibly to avoid trouble, do not attend the sessions presided by the respondent believing as they do that the latter was illegally elected. Upon the other hand, the Cuenco group believing itself as possessing the constitutional quorum and not desiring to make any semblance of admission to the contrary, does not find it convenient to compel the attendance of any senator of the Avelino group. Then the question arises—who will decide the conflict between the two groups? This anomalous situation will continue while the conflict remains unsettled, and the conflict will remain unsettled while this Court refuses to intervene. In the meantime, the validity of all the laws, resolutions and other measures which may be passed by the Cuenco group will be open to doubt because of an alleged lack of quorum in the body which authored them. This doubt may extend, in diverse forms, to the House of Representatives and to the other agencies of the government such as the Auditor General's Office. Thus, a general situation of uncertainty, pregnant with grave dangers, is developing into confusion and chaos with severe harm to the nation. This situation may, to a large extent, be stopped and constitutional processes may be restored in the Senate if only this Court, as the guardian of the Constitution, were to pronounce the final word on the constitutional mandate governing the existing conflict between the two groups. And, in my opinion, under the present circumstances, this Court has no other alternative but to meet the challenge of the situation which demands the utmost of judicial temper and judicial statesmanship. As herein before stated, the present crisis in the Senate is one that imperatively calls for the intervention of this Court.

As to the legality of respondent's election as acting President of the Senate,[2] I firmly believe that although petitioner's adjournment of the session of February 21, 1949, was illegal, such illegality cannot be countered with another illegality. The session wherein respondent was elected as acting President of the Senate was illegal because when Senator Mabanag raised the question of a quorum and the roll was called, only twelve senators were present. In the Philippines there are twenty-four senators, and therefore, the quorum must be thirteen. The authorities on the matter are clear.

"The constitution of our state ordains that a majority of each house shall constitute a quorum. The house of representatives consists of 125 members; 63 is a majority and a quorum. When a majority or quorum are present, the house can do business; not otherwise. A quorum possessed all the powers of the whole body, a majority of which quorum must, of course, govern." (In re Gunn, 50 Kan., 155; 32 P., 470, 476; 19 L. R. A., 519.)

"Quorum as used in U. S. C. A. Const. Art. 4, sec. 8, providing that a majority of each house shall constitute a quorum to do business, is, for the purposes of the Assembly, not less than the majority of the whole number of which the house may be composed. Vacancies from death, resignation or failure to elect cannot be deducted in ascertaining the quorum." (Opinion of Justices, 12 Fla. 653.)

"The general rule is that a quorum is a majority of all the members and a majority of this majority may legislate and do the work of the whole." (State vs. Ellington 117 N. C., 158; 23 S. E., 250-252, 30 L. R. A., 532; 53 Am. SR., 580.)

"* * * a majority of each House is necessary to transact business, and a minority cannot transact business, this view being in keeping with the provision of the Constitution permitting a smaller number than a quorum to adjourn from day to day merely." (Earp vs. Riley, 40 Okl., 340; 138, P. 164; Ralls vs. Wyand, 40 Okl., 323; 138 P. 158.)

"The Constitution provides that 'a majority of each (house) shall constitute a quorum to do business.' In other words, when a majority are present the House is in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or faction of the majority present. All that the Constitution requires is the presence of a majority, and when that majority are present, the power of the House arises." (U. S. vs. Ballin, Joseph & Co., 36 Law ed. 321, 325.)

"If all the members of the select body or committee, or if all the agents are assembled, or if all have been duly notified, and the minority refuse, or neglect to meet with the others, a majority of those present may act, provided those present constitute a majority of the whole number. In other words, in such case, a major part of the whole is necessary to constitute a quorum, and a majority of the quorum may act. If the major part withdraw so as to leave no quorum, the power of the minority to act is, in general, considered to cease." (1 Dillon, Mun. Corp. 4th ed., sec. 283.)[3]

Therefore, without prejudice to writing a more extensive opinion, if necessary, I believe that respondent Mariano J. Cuenco has not been legally elected as acting President of the Senate. It is true that respondent Cuenco, in fact, must be the Senate President because he represents the majority of the members now present in Manila, and, at any new session with a quorum, upon the present senatorial alignment, he will be elected to said office. But precisely because he is now the master of the situation, he must win his victory in accordance with the Constitution. It is absolutely essential in the adolescent life of our Republic to insist, strictly and uncompromisingly, on the democratic principles consecrated in our Constitution. By such efforts alone can we insure the future of our political life as a republican form of government under the sovereignty of a Constitution from being a mockery.

The situation now in this Court is this—there are four members who believe that there was no quorum in

respondent's election as against four other members who believe that there was such quorum. Two members declined to render their opinion on the matter because of their refusal to assume jurisdiction. And, one member is absent from the Philippines. Thus, the question of whether or not respondent has been legally elected is, to say the least, doubtful in this Court under the present conditions. This doubt, which taints the validity of all the laws, resolutions and other measures that the Cuenco group has passed and may pass in the future, can easily be dispelled by them by convening a session wherein thirteen senators are present and by reiterating therein all that has been previously done by them. This is a suggestion coming from a humble citizen who is watching with a happy heart the movements of this gallant group of prominent leaders campaigning for a clean and honest government in this dear country of ours.

[1] On this matter, the vote is 6 to 4 in favor of lack of jurisdiction.

[2] On this matter, the vote is 4 to 4.

[3] Quoted with approval in U. S. vs. Ballin, Joseph & Co., 36 Law ed., 321, 325.

DISSENTING

PERFECTO, J.:

In these quo warranto proceedings the question as to who among the parties is entitled to hold the position of President of the Senate is in issue.

There is no question that up to Monday, February 21, 1949, at the time the controversial incidents took place, petitioner Jose Avelino was the rightful occupant of the position. The litigation has arisen because of the opposing contentions as to petitioner's ouster and as to respondent's election as acting President of the Senate, on February 21, 1949.

Petitioner contends that the proceedings in which a resolution was passed declaring the position of President of the Senate vacant and electing respondent Mariano J. Cuenco as acting President of the Senate were illegal because, at the time, the session for said day has been properly adjourned, and the twelve Senators who remained in the session hall had no right to convene in a rump session, and said rump session lacked quorum, while respondent contends that the session which was opened by petitioner had not been legally adjourned, the Senators who remained in the session hall had only continued the same session, and there was quorum when the position of the President of the Senate was declared vacant and when respondent was elected as acting President of the Senate, to fill the vacated position.

Petitioner's version of the facts, as alleged in his petition, is to the effect that on Monday, February 21, 1949, at the time petitioner opened the session in the Senate session hall, there were twenty two Senators present who answered the roll call: Vicente J. Francisco, Fernando Lopez, Emiliano Tria Tirona, Pablo Angeles David, Salipada Pendatum, Ramon Torres, Enrique Magalona, Carlos Tan, Olegario Clarin, Melecio Arranz, Mariano Cuenco, Prospero Sanidad, Lorenzo Tañada, Vicente Madrigal, Geronima Pecson, Camilo Osias, Carlos Garcia, Ramon Diokno, Jose Vera, Tomas Cabili, Alejo Mabanag, and the petitioner Jose Avelino. While the minutes of the preceding session was being read the crowd of more than 1,000 people who entered the Senate hall to witness the session, became unruly, the repeated efforts of petitioner as well as the sergeant-at-arms and other peace officers to maintain peace and order notwithstanding. Fights and commotions ensued and several shots were fired among the audience. The Senators who spoke could not be heard because the spectators would either shout to

drown their voices or would demand that some other Senators should take the floor and be recognized by petitioner. Pandemonium reigned and it was impossible for the Senate to proceed with its deliberations free from undue pressure and without grave danger to its integrity as a body and to the personal safety of the members thereof. Senator Pablo Angeles David moved for adjournment until Thursday, February 24, 1949. There being no objection, petitioner adjourned the session until February 24, 1949. Thereupon petitioner and nine other Senators, namely, Vicente J. Francisco, Fernando Lopez, Emiliano Tria Tirona, Pablo Angeles David, Salipada Pendatun, Ramon Torres, Enrique Magalona, Carlos Tan, and Olegario Clarin left the session hall. Senator Melecio Arranz, President Pro-Tempore of the Senate, went the rostrum and, assuming the presidency of the chamber, convened the remaining twelve Senators into a rump session, in which a resolution was passed declaring vacant the position of the President of the Senate and electing respondent as President of the Senate. Thereupon respondent pretended to assume the office of President of the Senate and continues to pretend to assume said office.

Petitioner alleges five grounds to claim that respondent is usurping or illegally exercising the office of the President of the Senate: 1. Petitioner had adjourned the session of the Senate, the adjournment having been properly moved and, without objection, favorably acted upon; 2. Petitioner had full power to adjourn the session even without motion under Chapter II, Section 8, paragraph (e) of the Rules of the Senate; 3. The ordinary daily session having been adjourned, no other session could be called in the Senate on the same day; 4. The President Pro-Tempore had no authority to assume the presidency except in the cases specified in Chapter I, section 4 of the Rules of the Senate, and none of the conditions therein mentioned obtained at the time in question; and 5. The twelve Senators that convened in the rump session did not constitute a quorum to do business under the Constitution and the rules of the Senate, being less than one-half plus one of the twenty four members of the Senate.

Respondent's version of the events as follows:

"(a) Since Friday, February 18, 1949, when Senator Lorenzo M. Tañada announced and reserved in open session of the Senate that on Monday, February 21, 1949, he would make use of his one-hour privilege, it was known that formal charges would be filed against the then Senate President, petitioner in this case, on said date. Hours before the opening of the session on Monday, February 21, 1949, Senators Lorenzo M. Tañada and Prospero Sanidad registered in the Office of the Secretary of the Senate a resolution in which serious charges were preferred against the herein petitioner. A certified copy of said resolution, marked as Exhibit "1" is hereto attached and made an integral part hereof:

"(b) Although a sufficient number of senators to constitute a quorum were at the Senate session hall at and before 10:00 A. M., scheduled time for the session to begin, and in spite of the fact that the petitioner was already in his office, said petitioner deliberately delayed his appearance at the session hall until about 11:35 A. M.;

"(c) When finally the petitioner ascended the rostrum, he did not immediately open the session, but instead requested from the Secretary a copy of the resolution submitted by Senators Tañada and Sanidad and in the presence of the public the petitioner read slowly and carefully said resolution, after which he called and conferred with his followers, Senators Francisco and Tirona;

"(d) Shortly before 12:00 noon, due to the insistent requests of Senators Sanidad and Cuenco that the session be opened, the petitioner finally called the meeting to order;

"(e) Senator Sanidad, following a practice long established in the Senate, moved that the roll call be dispensed with as it was evident that with the presence of all the 22 senators who could discharge their functions, there could be no question of a quorum, but Senator Tirona opposed said motion, evidently in pursuance of a premeditated plan and conspiracy of petitioner and his followers to make use of all sorts of dilatory tactics to

prevent Senator Tañada from delivering his privilege speech on the charges filed against petitioner. The roll call affirmatively showed the presence of the following 22 Senators; Vicente J. Francisco, Fernando Lopez, Emiliano Tria Tirona, Pablo Angeles David, Salipada Pendatun, Ramon Torres, Enrique Magalona, Carlos Tan, Olegario Clarin, Melecio Arranz, M. Jesus Cuenco, Prospero Sanidad, Lorenzo M. Tañada, Vicente Madrigal, Geronima Pecson, Camilo Osias, Carlos Garcia, Ramon Diokno, Jose Vera, Tomas Cabili, Alejo Mabanag and Jose Avelino;

"(f) Senator Sanidad next moved, as in the usual practice, to dispense with the reading of the minutes, but this motion was likewise opposed by Senators Tirona and David, evidently, again, in pursuance of the above-mentioned conspiracy;

"(g) Before and after the roll call and before and after the reading of the minutes, Senator Tañada repeatedly took the floor to claim his right to deliver his one-hour privilege speech in support of the charges against petitioner, but the latter, then presiding, continually ignored him; and when after the reading of the minutes, Senator Tañada insisted on being recognized by the Chair, the petitioner announced that he would order the arrest of any senator who would speak without being previously recognized by him, but all the while, tolerating the antics of his follower, Senator Tirona, who was continuously and vociferously shouting at Senator Sanidad "Out of order! Out of order! Out of order! * * *", everytime the latter would ask the petitioner to recognize the right of Senator Tañada to speak.

"(h) At this juncture, some disorderly conduct broke out in the Senate gallery, as if by prearrangement, but the police officers present were able to maintain order. No shots were fired among the audience, as alleged in the petition. It was at about this same time that Senator Pablo Angeles David, one of petitioner's followers, was recognized by petitioner, and he moved for adjournment of the session, evidently again, in pursuance of the abovementioned conspiracy to prevent Senator Tañada from speaking;

"(i) Senator Sanidad registered his opposition to the adjournment of the session and this opposition was seconded by herein respondent who moved that the motion of adjournment be submitted to a vote;

"(j) Senator David reiterated his motion for adjournment and herein respondent also reiterated his opposition to the adjournment and again moved that the motion of Senator David be submitted to a vote;

"(k) Suddenly, the petitioner abandoned the Chair and hurriedly walked out of the session hall.

"(l) Without the session being adjourned, Senators David, Tirona, Francisco, Torres, Magalona, and Clarin followed the petitioner out of the session hall, while the rest of the senators, as afore-named in sub-paragraph (e) hereof, remained to continue the session abandoned by petitioner, whereupon Senator Melecio Arranz, as Senate Pro-Tempore, took the Chair and proceeded with the session.

"(m) Senator Cabili took the floor and delivered a speech, whereby he asked that it be made of record—as was in fact so made—that the deliberate abandonment of the Chair by the petitioner, made it incumbent upon Senate President Pro-Tempore Arranz and the remaining members of the Senate to continue the session in order not to impede and paralyze the functions of the Senate;

"(n) Senate President Pro-Tempore Arranz then suggested that respondent be designated to preside over the session, which suggestion was carried unanimously. The respondent thereupon took the Chair.

"(o) Upon motion of Senator Arranz, which was carried unanimously, Gregorio Abad was appointed Acting Secretary, as the Assistant Secretary, who was then acting as Secretary, had followed the petitioner when the latter abandoned the session;

"(p) Senator Tañada, after being recognized by the Chair, was then finally able to deliver his privilege speech, which took more than two hours, on the charges against the petitioner contained in the Resolution, attached hereto as Exhibit "1", and moved for the immediate consideration and approval of said Resolution. Senator

Sanidad reiterated this motion, after having first read aloud the complete text of said Resolution, and thereafter the same was unanimously approved;

"(q) With Senate President Pro-Tempore Arranz again occupying the Chair, after the respondent had yielded it to him, Senator Sanidad introduced Resolution No. 67, entitled "Resolution declaring vacant the position of the President of the Senate and designating the Honorable Mariano Jesus Cuenco Acting President of the Senate," a copy of which is herewith attached and made an integral part hereof as Exhibit "2". Put to a vote, the said Resolution was unanimously approved, respondent having abstained from voting;

"(r) The respondent having been duly elected as Acting President of the Senate, immediately took his oath of Office in open session, before Senate President Pro-Tempore Melecio Arranz, and since then, has been discharging the duties and exercising the rights and prerogatives appertaining to said office;

"(s) From the allegations of the petition, it clearly appears that the petitioner had only nine senators in his favor and twelve, decidedly against him, which fact negates the petitioner's assertion that there was no opposition to the motion for adjournment submitted by Senator David;

"(t) From the beginning of the session of February 21, 1949, to the alleged adjournment, it was evidently and manifestly the purpose of the petitioner to deprive Senator Tañada of his right to take the floor and to speak on the charges filed against said petitioner; that said petitioner resorted to all means to deprive the Senate of its right and prerogative to deliberate on Senate Resolution No. 68, Exhibit "1", and that when the petitioner realized that a majority of the Senators who were present in the said session was ready to approve said resolution, the petitioner abandoned the session;

"(u) The minutes of the session held on February 21, 1949, a copy of which is hereto attached and made an integral part hereof as Exhibit "3", show that the petitioner illegally abandoned the Chair while the Senate was in session and that the respondent has been duly elected Acting Senate President in accordance with the provisions of the Constitution."

Respondent alleges further that Senator David's motion for adjournment was objected to and was not submitted to a vote and, therefore, could not have been carried; that it is not true that petitioner had the power to adjourn the session even without motion; that the session presided over, first by petitioner and then by respondent, was orderly, no Senator having been threatened or intimidated by anybody, and after petitioner abandoned the session continued peacefully until its adjournment at 4:40 P. M.; that there was only one session held on said date; that petitioner's abandonment of the Chair in the face of an impending ouster therefrom constituted a temporary incapacity entitling the Senate President Pro-Tempore to assume the Chair; that there was quorum as, with the absence of Senator Tomas Confesor, who was in the U. S. and of Senator Vicente Sotto, who was seriously ill and confined in the Lourdes Hospital, the presence of at least; twelve senators constitutes a quorum; that, despite petitioner's claim that he adjourned the session to February 24, 1949, convinced that he did not count with the majority of the Senators and not wanting to be investigated by the special investigating committee regarding the grave charges preferred against him, the petitioner deliberately did not appear at the session hall on said date.

Three special defenses are advanced by respondent: (a) Lack of jurisdiction of the Supreme Court; (b) No cause of action as there are only nine Senators who had recognized petitioner's claim against twelve Senators who have made patent their loss of confidence in him by voting in favor of his ouster; and (c) The object of the action is to make the Supreme Court a mere tool of a minority group of ten Senators to impose petitioner's will over and above that of the twelve other members of the Senate, to entrench petitioner in power.

In impugning the jurisdiction of the Supreme Court, respondent contends that the present case is not justiciable, because it involves a purely political question, the determination of which by the Senate is binding and conclusive upon the courts (*Alejandrino vs. Quezon*, 43 Phil., 83; *Vera vs. Avelino*, 77 Phil., 192); respondent has been

recognized as acting President of the Senate by the President of the Philippines and said recognition is binding and conclusive on the courts (*Barcelon vs. Baker*, 5 Phil., 87; *Severino vs. Governor-General*, 16 Phil., 366) ; the Senate is the only body that can determine from time to time who shall be its President and petitioner's only recourse lies in said body; and this Court's action in entertaining the petition would constitute an invasion and an encroachment upon the powers, rights and prerogatives solely and exclusively appertaining to Congress, of which the Senate is a branch.

Upon the conflicting claims of the parties as to the real events, this Court authorized the reception of evidence. Before passing to consider and to weigh said evidence so as to determine the true events, it is only logical that we should first pass upon the question of jurisdiction raised by respondent.

In attacking the jurisdiction of the Supreme Court respondent alleges, as first ground, that the present controversy is not justiciable in nature, involving, as it does, a purely political question, the determination of which by the political agency concerned, the Senate, is binding and conclusive on the courts.

The contention is untenable. In the first place, it begs question. It assumes as premise that the question has been determined by the Senate, when the two opposing parties claim that each one of them represents the will of the Senate, and if the controversy should be allowed to remain unsettled, it would be impossible to determine who is right and who is wrong, and who really represents the Senate.

The questions raised in the petition, although political in nature, are justiciable because they involve the enforcement of legal precepts, such as the provisions of the Constitution and of the rules of the Senate. The power and authority to decide such questions of law form part of the jurisdiction, not only expressly conferred on the Supreme Court, but of which, by express prohibition of the Constitution, it cannot be divested.

"SEC. 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in—

"(1) All cases in which the constitutionality or validity of any treaty, law, ordinance or executive order or regulations is in question.

"(2) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

"(3) All cases in which the jurisdiction of any trial court is in issue.

"(4) All criminal cases in which the penalty imposed is death or life imprisonment.

"(5) All cases in which an error or question of law is involved."

Because the legal questions raised in this case cannot be decided without deciding also what is the truth on the controversial facts, by the very nature of things, the jurisdiction of the Supreme Court reached the settlement of the conflicting claims as to the real events.

Respondent alleges that he has been recognized by the President of the Philippines as acting President of the Senate and that executive recognition is binding and conclusive on the courts. The contention is erroneous. The actions of the President of the Philippines cannot deprive the Supreme Court of the jurisdiction vested in it by the Constitution. If the Congress of the Philippines, in which the Legislative power is vested, cannot deprive the Supreme Court of its jurisdiction to decide questions of law, much less can the President of the Philippines, on

whom is vested the Executive power, which in the philosophical and political hierarchy is of subordinate category to that of the Legislative power, do so. The power to enact laws is higher than the power to execute them.

The third argument of respondent, although based on truth, has nothing to do with the legal questions raised in this case. It is true that the Senate is the only body that can determine from time to time who is and shall be its President, but when the legal questions are raised in a litigation like in the present case, the proper court has the function, the province and the responsibility to decide them. To shirk that responsibility is to commit a dereliction of official duty.

Finally, it is alleged that for this Court to entertain the petition, is to invade and encroach upon the powers, rights and prerogatives solely and exclusively appertaining to the legislative Department, of which the Senate is a branch. The contention is erroneous. The controversy as to the legality of the adjournment declared by petitioner, of petitioner's ouster, as a result of the resolution declaring vacant the position of President of the Senate, of respondent's election as acting President of the Senate, and as to whether or not the twelve Senators who remained in the session hall could continue holding session and if they constitute quorum, are all legal questions upon which courts of justice have jurisdiction and the Supreme Court is the final arbiter.

From the evidence, it appears that in the session of Friday, February 18, 1949, at the time the resolution of confidence in favor of petitioner, introduced by Senator Lopez, was being put to vote, Senator Tañada voted in the negative, alleging as ground damaging facts, supported by several checks, highly detrimental to the personal and official honesty of petitioner. At the same time, Senator Tañada announced his intention of filing in the next session, to be held on Monday, February 21, 1949, formal charges against petitioner and of delivering during the so-called privilege hour a speech in support of said charges.

On said Monday morning, hours before the opening of the ordinary daily session, Senators Tañada and Sanidad registered with the Secretary of the Senate a resolution for the appointment of a Committee of Three, composed of Senators Cuenco, Angeles David, and Mabanag, with instructions to proceed immediately to investigate the serious charges against petitioner embodied in the document.

Said resolution, marked as Exhibit 1 of respondent's answer, is as follows:

RESOLUTION ORDERING THE INVESTIGATION OF CHARGES FILED AGAINST THE SENATE PRESIDENT, JOSE AVELINO.

WHEREAS, Senate President Jose Avelino, in a caucus of high government officials of the Philippine Government and leaders of the Liberal Party held at Malacanan Palace on January 15, 1949, delivered a speech, wherein he advocated the protection, or, at least, tolerance, of graft and corruption in the government, and placed the interest of grafters and corrupt officials as supreme and above the welfare of the people, a doctrine under which it is impossible for an honest and clean government to exist;

WHEREAS, this speech of Senate President Jose Avelino was given wide publicity by the press, especially the Chronicle Publications in their issues of January 16 and 18, 1949, as follows:

"The Senate President defended the abuses perpetrated by Liberal Party men. He called the investigations of the surplus property commission irregularities and the immigration quota scandal as acts of injustice. He described the probe as 'criminal' and 'odious'. He flayed the National Bureau of Investigation agents for persecuting Liberal party leaders.

" 'We are not angels', he said. 'When we die we all go to hell. It is better to be in hell because in that place there are no investigations, no secretary of justice, no secretary of interior to go after us.'

"Avelino, who is the present President of the Liberal Party, censured the President for his actions which, he

claimed, were mainly responsible for the division of the party into two hostile camps.

"Avelino asked the President to 'tolerate' if he could not 'permit', the abuses of the party in power, because why should we be saints when in reality we are not?

"He stressed that the present investigation being conducted by President Quirino on the surplus property scandal and the immigration quota racket has lowered the prestige of the Liberal Party in the eyes of the people, and is a desecration to the memory of the late President Manuel Roxas. 'It is a crime against the Liberal Party', Avelino said.

"Defining his attitude regarding rights and privileges of those who are in power in the government, Avelino maintained that the Liberal Party men are entitled to more considerations and should be given allowance to use power and privileges. If they abuse their power as all humans are prone to do, they will be given a certain measure of tolerance, Avelino said, adding, 'What are we in power for?'

"Avelino cited the surplus property investigation as an attempt to besmear the memory of President Roxas. As a result of these investigations, the members of Congress are subjected to unjust and embarrassing questionings by NBI, Avelino said. And what is worse is the fact that these senators and representatives are being pilloried in public without formal charges filed against them." (Manila Chronicle issue of Jan. 16, 1949) .

"At last Saturday night's caucus Senate President Avelino for two hours lectured to President Quirino on Liberal Party discipline. At the same time he demanded 'tolerance' on the part of the Chief Executive by the party in power.

"The investigations were conducted on vague charges, Avelino claimed. Nothing specific has been filed against any top Liberal Party man. And yet National Bureau of Investigation agents have persecuted top leaders of the Liberal Party. That is not justice. That is injustice ... It is odious ... It is criminal.

"Why did you have to order an investigation Honorable Mr. President? If you cannot permit abuses, you must at least tolerate them. What are we in power for? We are not hypocrites. Why should we pretend to be saints when in reality we are not? We are not angels. And besides when we die we all go to hell. Anyway, it is preferable to go to hell where there are no investigations, no Secretary of Justice, no Secretary of Interior to go after us.

"When Jesus Christ died on the Cross, He made a distinction between a good crook and the bad crooks. We can prepare to be good crooks.

"Avelino related the story of St. Francis of Assisi. A thief sought sanctuary in St. Francis' convent. When the soldiers came to the convent and ordered St. Francis to produce the wanted thief, St. Francis told the soldiers that the hunted man had gone the other way.

"Avelino then pointed out that even a saint had condoned the sins of a thief.

"The investigations ordered by President Quirino, Avelino said, was a desecration of the memory of the late President Roxas. The probe has lowered, instead of enhanced, the prestige of the Liberal Party and its leaders in the eyes of the public.

"If the present administration fails, it is Roxas and not Quirino that suffers by it, because Quirino's administration is only a continuation of Roxas, Avelino said.

"Avelino compared all political parties to business corporations, of which all members are stockholders. Every year the Liberal Party makes an accounting of its loss and profit. The Liberal Party, he said, has practically no dividends at all. It has lost even its original capital. Then he mentioned the appointments to the government of

Nacionalistas like: Lino Castillejo, as governor of the Reconstruction Finance Corporation, Nicanor Carag, consul to Madrid; and Vicente Formoso, General Manager of the National Tobacco Corporation." (Manila Chronicle issue of Jan. 18, 1949.).

WHEREAS, after the first publication of the said speech in the Manila Chronicle issue of January 16, 1949, the Senate President, in a letter to the Chronicle Publications dated January 17, 1949, asserted that the said news report was a "maliciously distorted presentation of my remarks at that caucus, under a tendentious headline", and threatened that "unless the proper redress is given to me, therefore, I shall feel compelled to take the necessary steps to protect my reputation and good name";

WHEREAS, the Chronicle Publications not only refused to retract or make the rectification demanded by the Senate President, but on the contrary, in their issue of January 18, 1949, challenged him to take his threatened action, stating that "in order to establish the truth, we are inviting the Senate President to file a libel suit against the Chronicle" and further repeated the publications of their reports on the Senate President's speech in the same issue of January 18, 1949 as quoted above;

WHEREAS, notwithstanding in the considerable length of time that has elapsed, the Senate President has not carried out his threat of filing action against the Chronicle Publications, thereby confirming, in effect, his doctrine of toleration of graft and corruption;

WHEREAS, in open and public session of the Senate on February 18, 1949, there were exhibited photostatic copies of four checks totalling P566,405.60, which appear to have come into the possession and control of the Senate President, after he had assumed his office;

WHEREAS, the first of the aforesaid checks, which is Manager's Check No. M5375 of the National City Bank of New York, drawn on September 24, 1946, in favor of the Senate President in the amount of P312,500.00, was indorsed by him to his wife, Mrs. Enriqueta C. Avelino, who deposited it in her current account with the Philippine National Bank on October 26, 1946;

WHEREAS, the second of the aforesaid checks, which is Manager's Check No. 49706 of the Nederlandsch Indische Handelsbank, drawn on October 21, 1946, in favor of the Senate President in the amount of P196,905.60, was indorsed by him to his son, Mr. Jose Avelino, Jr., who cashed it on October 22, 1946;

WHEREAS, the third of the aforesaid checks, which is Check No. 37262 of the Nederlandsch Indische Handelsbank, drawn on October 23, 1946 by Chung Liu Ching Long & Co., Ltd., a Chinese concern, in favor of "Cash", in the amount of P10,000.00, was indorsed by the Senate President to his wife, Mrs. Enriqueta C. Avelino, who deposited it in her Savings Account No. 63436 with the Philippine National Bank on October 26, 1946;

WHEREAS, the fourth of the aforesaid checks, which is Check No. 37268 of the Nederlandsch Indische Handelsbank, drawn by the aforementioned Chinese concern, Chiung Liu Ching Long and Co., Ltd., in the amount of P47,500.00 in favor of the Senate President, was indorsed by him to his wife, Mrs. Enriqueta C. Avelino, who deposited it in her current account with the Philippine National Bank on October 26, 1946;

WHEREAS, of the four checks aforementioned, the one for P196,905.60 was cashed by the Senate President's son, Jose Avelino, Jr., on October 22, 1946; while of the three other checks totalling P370,000.00, which was deposited by the Senate President's wife, Mrs. Enriqueta C. Avelino, in her savings and current accounts with the Philippine National Bank on October 26, 1946, P325,000.00 were withdrawn by her on the same day;

WHEREAS, in the course of the speech delivered by the Senate President on the floor of the Senate on February 18, 1946, in an attempt to explain the foregoing checks, he refused to be interpellated on the same, and his explanation lacked such details and definiteness that it has left many doubts unsettled;

WHEREAS, in the case of the check for P312,500.00, the Senate President's explanation that the same

represented proceeds from the sale of surplus beer to cover party obligations is directly contradicted by the source of the same, Ching Ban Yek, who declared under oath before the Horilleno Investigating Committee that the said sum of P312,500.00 had been loaned by him to the Senate President, who repaid the same within ten days;

WHEREAS, it appears that during the period from December 29, 1945 to April 30, 1948, deposits totalling P803,865.45 were made in the current account of the Senate President's wife Mrs. Enriqueta C. Avelino, in the Philippine National Bank, of which amount P6,204.86 were deposited before his election to office and the sum of P797,660.59 was deposited after his election;

WHEREAS, the tax returns of the Senate President do not bear explanations made in his speech of February 18, 1949 to the effect that he and his wife had made substantial amounts in commercial transactions in shoes and liquor;

WHEREAS, in his said speech of February 18, 1949, the Senate President said that "en politica todo vale", and that inasmuch as the Nacionalistas were prone to commit frauds, it was right for the Liberals to commit frauds in the elections to even up with frauds committed by the opposition;

WHEREAS, the said speech of February 18, 1949 delivered by the Senate President justified the commission of electoral frauds, which justification is a direct attack on the sovereignty of the people and may be a cause of unrest or revolution;

WHEREAS, the Senate President, as ex-officio Chairman of the Commission on Appointments which passes upon all Presidential appointments, including those to the judiciary, has abused the prerogatives of his office by seeking in several instances to interfere with and influence some judges in deciding cases pending before them, thereby imperiling the independence of the judiciary and jeopardizing the impartial administration of justice;

WHEREAS, the honor, dignity and prestige of the people and of the members of the Senate demand a thorough, impartial and immediate investigation of all the foregoing; Now, therefore,

- Be it resolved, To appoint, as they are hereby appointed
- a Committee of three (3) members of this Senate, to be composed of Senators Cuenco, Angeles David and Mabanag, who
- shall immediately proceed to investigate the charges mentioned
- above, with full powers to compel the attendance of witnesses
- and the production of books of account, documents, and other
- evidence, and to utilize the facilities and the services of such
- personnel of this Senate as it may deem necessary, with instructions to render its report and recommendations to the
- Senate on or before Friday, February 25, 1949.

Adopted, February 21, 1949.

Although a sufficient number of Senators to constitute quorum were already present in said morning at and before 10:00 o'clock, the scheduled time for the daily session to begin, the session was not then opened, because petitioner failed to appear in the hall until about 11:35, the time petitioner ascended the rostrum where, instead of

calling the meeting to order, he asked for a copy of the resolution introduced by Senators Tañada and Sanidad and, after reading it slowly, he called to his side Senators Angeles David and Tirona and conferred with them.

Only after the insistent requests of Senators Sanidad and Cuenco that the session be opened, that petitioner called the meeting to order shortly before 12:00 o'clock noon.

Senator Sanidad moved that the roll call be dispensed with. Senator Tirona opposed the motion and the roll call showed the presence of the following twenty two Senators: Vicente J. Francisco, Fernando Lopez, Emiliano Tria Tirona, Pablo Angeles David, Salipada Pendatun, Ramon Torres, Enrique Magalona, Carlos Tan, Olegario Clarin, Melecio Arranz, Mariano Jesus Cuenco, Prospero Sanidad, Lorenzo Tañada, Vicente Madrigal, Geronima Pecson, Camilo Osias, Carlos Garcia, Ramon Diokno, Jose Vera, Tomas Cabili, Alejo Manag and Jose Avelino.

Senator Sanidad again moved that the reading of the minutes be dispensed with, but the motion was again opposed by Senator Tirona whose opposition was joined by Senator Angeles David, and the reading of the minutes proceeded.

Senator Tañada repeatedly took the floor to claim his right to deliver his one-hour privilege speech in support of the charges against petitioner, pursuant to the announcement he made in the session of February 18, 1949; he did it before and after the roll call and the reading of the minutes. He was ignored by the Chair and petitioner announced that he would order the arrest of any Senator who would speak without having been previously recognized by him. Senator Sanidad requested the Chair to recognize the right of Senator Tañada to speak, and every time he would make the request, Senator Tirona would oppose him upon the ground that the requests were out of order.

Meanwhile, commotion and disorder took place in the Senate gallery. Shouts were heard from individuals of the audience, where two fist fights took place. The detonation of a gun shot was heard from outside. Senator Angeles David, after being recognized by the Chair, moved for adjournment of the session. The motion was objected by Senator Cuenco who, at the same time, moved that the motion be submitted to vote. Petitioner, instead of submitting to vote the motion to adjourn, banged the gavel and declared the session adjourned until next Thursday, February 24, 1949, and, thereupon, left the session hall followed by the nine Senators (Vicente J. Francisco, Fernando Lopez, Emiliano Tria Tirona, Pablo Angeles David, Salipada Pendatun, Ramon Torres, Enrique Magalona, Carlos Tan, and Olegario Clarin), supporting him. Twelve Senators, respondent and his eleven supporters, remained in the session hall. Senator Arranz, President Pro-Tempore of the Senate, ascended the rostrum, and called those Senators present to order. Senator Mabanag raised the question of quorum and the President Pro-Tempore ordered a roll call, to which all the twelve Senators remaining in the session hall answered.

The President Pro-Tempore declared the presence of quorum and those present proceeded to continue transacting business. Senator Cabili took the floor and made it of record that the deliberate abandonment of the Chair by petitioner made it incumbent upon the Senate President Pro-Tempore and those remaining members of the Senate to continue the session in order not to impede and paralyze the functions of the Senate. Senator Arranz suggested that respondent be designated to preside over the session and the suggestion was carried unanimously and respondent took the Chair.

Senator Tañada delivered his privileged speech, which took two hours on the charge against petitioner contained in Resolution No. 68, Exhibit "1", and moved for the immediate consideration and approval of said resolution, the complete text of which was read. The motion was seconded by Senator Sanidad, and the resolution was unanimously approved. Respondent yielded the Chair to the President Pro-Tempore and Senator Sanidad introduced Resolution No. 67, Exhibit "2", which read as follows:

RESOLUTION DECLARING VACANT THE POSITION OF THE PRESIDENT OF THE SENATE AND DESIGNATING THE HONORABLE MARIANO JESUS CUENCO ACTING PRESIDENT OF THE SENATE.

Resolved by the Senate in session assembled, That a quorum exists; that the Honorable Jose Avelino, President of the Senate, having abandoned the chair, his position is hereby declared vacant; and that, the Honorable Mariano Jesus Cuenco of Cebu, be designated Acting President of the Senate, until further orders from this Body.

Adopted, February 21, 1949.

The resolution was unanimously approved, with respondent abstaining from voting. Pursuant to said resolution, respondent took his oath of office in open session before President Pro-Tempore Arranz and has started, since then, to discharge the duties, rights and privileges of acting President of the Senate.

The above recital of facts is based on our findings on the evidence on record. From the said facts we believe the following conclusions are unavoidable.

- The adjournment declared by petitioner was arbitrary and illegal.
- After petitioner and the 9 Senators supporting him had walked out from the session hall, the Senate could not continue holding session and transact business for lack of quorum.

In the following discussion we will express the reasons in support of the above conclusions.

ILLEGAL ADJOURNMENT

A motion to adjourn has the highest precedence when a question is under debate and, with certain restrictions, it has the highest privilege under all other conditions. Under parliamentary practice, even questions of privilege and the motion to reconsider yield to it. The motion to adjourn may be made after the "yeas" and "nays" are ordered and before the roll call has begun, before reading of the journal. The motion is not debatable and, after the motion is made, neither another motion nor an appeal may intervene before the taking of the vote.

The power to adjourn is one of the exclusive prerogatives of a legislative chamber. It cannot be exercised by any single individual, without usurpation of the collective prerogatives. It is too tremendous a power to be wielded by a single individual. The functions of the Senate and its opportunity to transact official business cannot be left to the discretion of a single individual without jeopardizing the high purposes for which a legislative deliberative body is established in a democratic social order. Single-handed individual discretion on the matter may not mean anything other than placing the legislative chamber under a unipersonal tyranny.

There is no provision in the present rules of the Senate which expressly or impliedly authorizes an adjournment without the consent of the body or one which authorizes the presiding officer to decree *motu proprio* said adjournment, and the sound parliamentary practice and experience in this country and in the United States of America, upon which ours is patterned, would not authorize the existence of such a provision.

Petitioner alleges that he ordered the adjournment because the motion of Senator Angeles David to said effect was properly made and met with no objection. If this version of the facts is true, then it was right for petitioner to declare the adjournment, because the absence of any objection, provided the motion was properly made and the other Senators after having been properly apprised of the motion, did not object to it, was an evidence of an implied consent of all the members. The evidence, however, fails to support petitioner's claim.

We are inclined to consider respondent's version to be more in consonance with truth. We are of opinion that the

motion to adjourn was actually objected to. Senator Tañada was bent on delivering a speech he had ready on the charges embodied in a resolution fathered by himself and by Senator Sanidad, which both filed early in the morning, long before the session was opened. The formulation of said charges had been announced days before, since the session of Friday, February 18, 1949, when he showed photostatic copies of some checks as basis of a part of the charges to be filed. In said Friday session respondent's group suffered defeat on the approval of the resolution of confidence fathered by Senator Lopez. And it is understandable that respondent's group of Senators, believing themselves to constitute the majority, did not want to waste any time to give a showing of said majority and must have decided to depose petitioner as soon as possible to wrest from him the Senate leadership that upon democratic principles rightly belongs to them.

As a showing of eagerness to hurry up the unfolding events that would give them the control of the Senate, Senator Sanidad moved to dispense with the roll call and the reading of the minutes, and had been requesting that Senator Tañada be recognized to take the floor. Senator Tañada himself made attempts to deliver his speech.

Evidently, petitioner and his supporters decided to adopt a blocking strategy to obstruct the processes that would give due course to the investigation of the serious charges made in resolution No. 68, Exhibit 1, and would effect petitioner's ouster as President of the Senate.

This strategy is evidenced by the belated appearance of petitioner and his supporters at the session hall and petitioner's procrastination in opening the session, by taking all his time in reading first the Tañada and Sanidad resolution, formulating charges against him, and conferring with Senators Angeles David and Tirona and in not calling to order the members of the Senate before Senators Cuenco and Sanidad began urging that the session be opened.

Petitioner's allegation that, even without motion from any member, he could adjourn the session under the rules of the Senate, is not well taken. There is nothing in the rules of the Senate giving petitioner such authority. The provisions quoted in the petition authorizes the Senate President to take measures to stop disorder, but that power does not include the one to adjourn.

The circumstances lead us to the conclusion that illegal adjournment and the walk out of the petitioner and his supporters from the session hall had the purpose of defeating or, at least, delaying, action on the proposed investigation of the charges against petitioner and of his impeding ouster, by the decisive votes of respondent's group of Senators.

The adjournment decreed by petitioner was arbitrary and illegal.

QUORUM

There is no controversy that at the session in question there were present in the session hall only twelve Senators, those composing respondent's group, and this fact had been ascertained by the roll call ordered by President Pro-Tempore Arranz, after Senator Mabanag had raised the question of quorum.

The Constitution provides:

"A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties as such House may provide." (Sec. 10, Sub-sec. 2 Article VI.)

The majority mentioned in the above provision cannot be other than the majority of the actual members of the Senate. The words "each House" in the above provision refer to the full membership of each chamber of Congress.

The Senate was and actually is composed of 24 Senators, and a majority of them cannot be less than thirteen. Twelve is only half of twenty-four. Nowhere and at no time has one-half ever been the majority. Majority necessarily has to be more than one-half.

We have heard with interest the arguments advanced by respondent's counsel, premised on the fact that the above constitutional provision does not use the words "of the members" and the theory of the *amicus curiae* that the majority mentioned in the Constitution refers only to the majority of the members who can be reached by coercive processes. There is, however, nothing in said arguments that can validly change the natural interpretation of the unmistakable wordings of the Constitution. "Majority of each House" can mean only majority of the members of each House, and the number of said members cannot be reduced upon any artificial or imaginary basis not authorized by the context of the Constitution itself or by the sound processes of reason.

For all the foregoing, we conclude that:

- The legal and constitutional issues raised by the petitioner in this case, notwithstanding their political nature and implications, are justiciable and within the jurisdiction expressly conferred to the Supreme Court, which cannot be divested from it by express prohibition of the Constitution. Should there be analogous controversy between two claimants to the position of the President of the Philippines, according to the Solicitor General, one of the attorneys for respondent, the Supreme Court would have jurisdiction to decide the controversy, because it would raise a constitutional question. Whether there was a quorum or not in the meeting of twelve Senators in which respondent was elected acting President of the Senate, is a question that calls for the interpretation, application and enforcement of an express and specific provision of the Constitution. Should the two absent Senators come and attend the session and side with the petitioner's group, it is agreed that the Senate will be kept at a stand still, because of the deadlock resulting from twelve Senators voting against twelve other Senators, each group supporting petitioner's and respondent's opposing claims to the position of President of the Senate. Admitting that pressure of public opinion may not break the impasse, it has been suggested from respondent's side that it may invite revolution. Between the two alternatives, jurisdiction of the Supreme Court and revolution, there is only one choice possible, and that is the one in consonance with the Constitution, which is complete enough to offer orderly remedies for any wrong committed within the framework of democracy it established in this country. Should this Supreme Court refuse to exercise jurisdiction in this case, such refusal can only be branded as judicial abdication, and such shirking of official responsibility cannot expect acquittal in the judgment of history. The gravity of the issues involved in this case, affecting not only the upper branch of Congress, but also the presidential succession as provided by Republic Act No. 181, is a challenge to our sense of duty which we should not fail to meet.

- The adjournment decreed by petitioner of the Monday session, without the authority of the Senate, was illegal and, therefore, null and void.

- The rump session held by twelve Senators, the respondent and his supporters, after petitioner and his nine supporters had walked out from the session hall, had no constitutional quorum to transact business.

- The resolution declaring vacant the position of the President of the Senate and choosing respondent as acting President of the Senate, has been adopted in contravention of the Constitution for lack of quorum. The fact that respondent has been designated only as acting President of the Senate, a position not contemplated by the Constitution or by Republic Act No. 181 on presidential succession, so much so that his position in acting capacity, according to his own counsel, would not entitle respondent to succeed to the position of the President of the Philippines, emphasizes the invalidity of respondent's election.

Notwithstanding the importance of this case, the legal issues involved are very simple, and it would not be hard to

reach a prompt conclusion if we could view the controversies with the attitude of a mathematician tackling an algebraic equation. Many considerations which, from the point of view of the laymen, of the press, of public opinion in general and the people at large, may appear of great importance, such as who will wield the power to control the Senate and whether or not petitioner is guilty of the serious charges filed against him, are completely alien to the questions that this Court must answer. The motives and motivations of petitioner and respondent of their respective supporters in the Senate in taking the moves upon which this case has arisen are their exclusive business and should not be minded for the purposes of our decision.

The members of the Senate were and are free to depose petitioner and to elect another Senator as President of the Senate, and their freedom to make such change is subject only to the dictates of their own conscience and to any verdict that the people, through the electorate, may render at the polls, and to the judgment of historians and posterity. But in making such changes of leadership, the Senate and the Senators are bound to follow the orderly processes set and outlined by the Constitution and by the rules adopted by the Senate as authorized by the fundamental law. Any step beyond said legal bounds may create a legal issue which, once submitted to the proper courts of justice, the latter cannot simply wash their hands and ignore the issue upon the pretext of lack of jurisdiction, adopting the indifferent attitude of a passerby who does not care whether the lashing of the wind may cause a live wire to ignite a neighboring house.

When a Senator or a number of Senators come to the Supreme Court, complaining that the President of the Senate has adjourned or is adjourning the daily sessions of the Senate over and above objections voiced from the floor and without obtaining first the approval or consent of the majority, we cannot close our eyes to the complaint or bury our heads in the sand in ostrich fashion. Otherwise, we would be disregarding our sworn duty and, with our abstention or inaction, we would be printing the stamp of our approval to the existence and continuation of a unipersonal tyranny imposed upon the upper chamber of Congress, a tyranny that may obstruct and defeat the functioning and actuations of the Senate and, consequently, of the whole Congress, thus depriving the country of the benefits of legislation.

When a member of the Senate comes to us complaining that he is being deprived of the powers and prerogatives of the position of President of the Senate, to which he has been duly elected because twelve Senators, without constituting a quorum, have illegally convened and voted to depose him and to elect another Senator in his place, he raises a constitutional question of momentous importance which we should not fail to answer without betraying the official trust reposed on us. Such complaint constitutes, in effect, an accusation of usurpation of authority by the twelve Senators, in utter violation of the fundamental law. The situation would demand remedy and no other agency of government can offer that remedy than the Supreme Court itself with whom the complaint has been filed.

The existence of a quorum in a collective body is an indispensable condition for effective collective action. Because a society or collective body is composed of separate and independent individual units, it cannot exist without the moral annectent of proper organization and can only act in organized form. Every time it has to act, it has to convene its individual units into an organic whole, and quorum here is the organizing element without which the personality of the body cannot exist or be recognized. The importance of such organizing element has been recognized by the members of our Constitutional Convention, and that is the reason why they inserted in the Constitution the provision requiring the existence of quorum for the former National Assembly to transact official business and that when, amending the Constitution, it voted itself out of existence, to be replaced by a bicameral Congress. The requirement, both in the original text of the Constitution and in the amendment, had been ratified by the sovereign will of the people.

When we required a majority of a legislative chamber to constitute a quorum we did it for mighty reasons, such as

that democracy is based on the rule of the majority and, to allow a quorum of less than the majority of the members, one-half of them for example, as in the present controversy, is to allow the anomalous and anarchic existence of two independent bodies where the Constitution provides for only one. If the twelve Senators of respondent's group constitute quorum to transact official business, what will preclude the twelve remaining Senators from constituting themselves into a quorum to transact official business? This is not impossible, should Senator Sotto decide to attend the session, even if carried in a stretcher, and Senator Confesor returns from abroad and sides with petitioner's group. Then there will be, in effect, two Senates and, according to respondent's theory the Supreme Court will have no jurisdiction to decide the conflict, and no one can decide it except public opinion or, in its failure, revolution. Such absurd situation and catastrophic result should be avoided.

Lack of jurisdiction is sometimes a refuge behind which weak courts may take shelter when afraid to displease the powerful.

Instead of disputing the jurisdiction of the Supreme Court in this case, everybody must congratulate himself because petitioner, instead of resorting to any high-handed means to enforce his right to continue holding the position of President of the Senate, has come to us for proper redress by the orderly processes of judicial settlement. Notwithstanding the fact that three years ago, he impugned the jurisdiction of the Supreme Court and won his case on that ground—the injustice then committed against the suspended Senators Vera, Diokno and Romero now being more generally recognized—petitioner came to this Court to submit his case to our jurisdiction.

The action taken by petitioner in filing his complaint with this Supreme Court is premised on this sharing the conviction that said Tribunal is the last bulwark of the rights and liberties of the people, the final arbiter on all constitutional conflicts, and the ultimate redoubt of the majesty of the law. That conviction and faith should not be betrayed, but rather strengthened, and more imperatively nowadays when the majesty of the law, the basic tenets of the Constitution, the principles of humanity springing from the golden rule, which is the law of laws, are being the subject of bold onslaughts from many elements of society, bent on taking justice in their own hands or on imposing their will through fraud or violence. The malady is widespread enough to imperatively and urgently demand a more complete respect and faith in the effectiveness of our system of administration of justice.

For the Supreme Court to renounce its jurisdiction in this case is to disappoint the believers in a philosophy and social order based on constitutional processes and on legal juridical settlement of all conflicts that may beset a democracy. It has been said in the hearing of this case that for this Court to refuse cognizance of it may not have other alternative, if the pressure of public opinion may fail—and by experience we know that it had suffered many failures—than revolution. This emphasizes the immeasurable responsibility of this Supreme Court if it should falter in the performance of its plain duty and should dispose of this case with the indifference with which a beach vacationist would dismiss a gust of wind.

The principle of separation of powers, so often invoked, to bind the hands of the courts of justice into futility, should not be understood as absolute. It is an apt rule of the tri-partite division of government as enunciated by Aristotle and further developed by Montesquieu, as the best scheme to put in practice the system of check and balance considered necessary for a workable democracy. To make absolute that principle is to open the doors to irretrievable absurdity and to create three separate governments within a government and three independent states within a state. Indeed, it is to avoid such a teratologic creature that the Constitutional Convention had not inserted among the principles embodied in the fundamental law.

Judicial determination of all constitutional or legal controversies is the inherent function of courts. The Constitution of the United States of America, unlike our own Constitution, is silent as to the power of courts of justice to nullify an unconstitutional act of Congress. Notwithstanding the silence, when the proper case arose, the

United States Supreme Court, under the wise leadership of Chief Justice Marshall, had not hesitated in declaring null and void a law enacted in contravention of constitutional provisions. The Supreme Court of the Republic of the Philippines should not fail to match such an outstanding evidence of judicial statesmanship.

To bolster the stand against our assumption of jurisdiction in this case the theory has been advanced that, the President of the Philippines having recognized respondent as a duly elected acting President of the Senate, that recognition is final and should bind this Court. The theory sprouts from the same ideology under which a former king of England tried to order Lord Coke how the latter should dispose of a pending litigation. Our answer is to paraphrase the great English judge by saying that nothing should guide us except what in conscience we believe is becoming of our official functions, disregarding completely what the President of the Philippines may say or feel about it.

As a matter of fact, two pretenders may dispute the office. As in the present case, Congress may split into two groups after a presidential election and each group may proclaim a different candidate as the duly elected President of the Philippines. Because of a mistaken ideas to the scope of the principle of separation of powers, if the case is brought to us for decision, shall we, as Pontious Pilate, wash our hands and let the people bleed and be crucified in the Calvary of revolution?

There is absolutely no merit in invoking the unfortunate decision in the case of Vera vs. Avelino, (77 Phil., 192). No one now would regret more that such a decision had been rendered than petitioner himself, the very one who won it upon the pusillanimous judicial theory of lack of jurisdiction. The more said decision is forgotten, the better, it being one of the blemishes without which the scutcheon of the post-liberation Supreme Court would be spotless.

We vote to render judgment granting the petition and ordering respondent to relinquish the powers, prerogatives and privileges of the position of the President of the Senate in favor of petitioner who, on the other side, should be restrained from putting any obstacle or obstruction by illegal adjournments or otherwise, in the holding of the regular daily session of the Senate. Said body should be allowed to continue transacting official business unhampered by any procedure intended to impede the free expression of the will of the majority.

DISIDENTE

BRIONES, M.:

Sin perjuicio de redactar una opinion mas extensa sobre mi voto en este asunto, me permito adelantar las siguientes observaciones:

(1) Esta Corte Suprema tiene jurisdiction sobre el asunto.—Reafirmo la posicion tomada por mi en los asuntos de Vera contra Avelino (77 Phil., 192) y Mabanag contra Lopez Vito (78 Phil., 1). La cuestion constitucional y legal aqui debatida no es de caracter puramente politico en el sentido de que esta Corte deba inhibirse de enjuiciarla, sino que es perfectamente justiciable. Se plantea la cuestion de si el grupo de senadores que eligio al recurrido como presidente interino del Senado tenia facultad para hacerlo. Se alega y se sostiene que no existia dicha facultad, puesto que cuando dicho grupo se reunio no habia un quorum presente de conformidad con los terminos de la Constitucion y de los reglamentos del Senado. Esta cuestion es justiciable y puede y debe ser enjuiciada, determinada y resuelta por esta corte, ya que la parte agraviada ha venido a nosotros en demanda de remedio. Esta corte no puede lavarse las manos en un ademan de inhibicion pilatista; no puede continuar con la politica de esconde-cabeza-en-la-arena-del-desierto estilo avestruz. El issue constitucional y legal discutido es importante, muy importante. Tiene repercusiones directas y vitalisimas en la vida, libertad y hacienda de los ciudadanos. Es el

negocio supremo de legislar lo que esta en debate. Es, por tanto, una de las esencias de la misma republica el tema de la controversia. La escaramuza politica es lo de menos; el meollo juridico-constitucional es lo esencial e importante.

Es tanto mas urgente que esta Corte asuma jurisdiction sobre el caso cuanto que el conflicto surgido en el Senado entre los dos grupos politicos en guerra ha cobrado las proporciones de una tremenda crisis nacional, preñada de graves peligros para la estabilidad de nuestras instituciones politicas, para el orden publico y para la integridad de la existencia de la nacion.

Tenemos un precedente tipico en la jurisprudencia del Estado de New Jersey, Estados Unidos de America. Es el caso de Werts vs. Rogers, del año 1894, Atlantic Reporter, Vol. 28, p. 728, N. J. La analogia es completa. Tambien se disputaban la presidencia del Senado dos Senadores, cada cual pretendiendo ser el legitimo. Tambien hubo dos facciones, cada cual reclamando ostentar la genuina representacion popular. Un grupo se llamo "Adrian Senate" y el otro grupo "Rogers Senate", por los nombres de los presidentes en disputa. Se arguyo igualmente que la Corte Suprema de New Jersey no podia asumir jurisdiction sobre el caso por tratarse de una cuestion eminentemente politica, por tanto no justiciable. La Corte, sin embargo, conocio del caso y, por boca de su Presidente el eminente jurisconsulto Mr. Beasley, hizo el siguiente categorico pronunciamiento:

****. That this court has the legal right to entertain jurisdiction in this case, displayed by this record, we have no doubt; and we are further of opinion that it is scarcely possible to conceive of any crisis in public affairs that would more imperatively than the present one call for the intervention of such judicial authority." (supra, p. 758.)

Ademas de la justiciabilidad de la materia en controversia, una de las principales razones invocadas por la Corte Suprema de New Jersey para asumir jurisdiction sobre el caso fue la extrema necesidad de resolver un dead lock que paralizaba la maquinaria legislativa, afectaba a la estabilidad del gobierno y ponia en grave peligro los intereses publicos. Pregunto: no existe la misma razon de extrema necesidad en el presunto caso? que duda cabe de que el conflicto entre las dos facciones en nuestro Senado esta afectando seriamente a los intereses publicos? que duda cabe de que la normalidad constitucional esta rota, congrave preocupacion de todo el mundo y con grave daño de la tranquilidad publica?

(2) El levantamiento de lam sesion ordenado por el presidente Avelino fue ilegal y arbitrario.-Estimo que el presidente Avelino obro ilegal y arbitrariamente al ordenar el levantamiento de las sesion frente a la oposicion firme, enegica y tenaz de algunos senadores adversos a el. En vista de esta oposicion, el deber de la Mesa era someter a votacion la mocion de levantamiento de la sesion presentada por el Senador Angeles David. Avelino no tenia el derecho, por si y ante si, de declarar levantada la sesion. Solamente cuando no se formula ninguna objecion es cuando rutinariamente el presiding officer puede dar por aprobada una mocion de levantamiento de la sesion. Si la facultad de levantar la sesion no estuviera sujeta a la expresa voluntad de la mayoria, seria un arma sumamente peligrosa en manos de un presidente despotico y arbitrario.

La pretension de que el Senador Avelino ordeno el levantamiento de la sesion en uso de sus facultades inherentes, en vista de que el mismo creia que habia un peligro inminente de desorden y tumulto en la sala de sesiones, es completamente insostenible. Las circunstancias del caso no justifican semejante pretension, a tenor de las pruebas obrantes en autos. Lo que debia haber hecho el Senador Avelino era tratar de apaciguar al publico y prevenir todo conato de desorden. Tenia medios para hacerlo. No lo hizo. En cambio, dejo la silla presidencial juntamente con los senadores de su grupo. Esto equivalia a una deserccion y los senadores del otro grupo tenian perfecto derecho a proceder como procedieron, quedandose en el salon para continuar celebrando la sesion. Esta sesion venia a ser una tacita reconduction—una simple prolongation de la sesion que habia sido declarada abierta por el presidente Avelino con un quorum presente de 22 miembros.

(3) Sin embargo, la sesion prolongada se convirtio en ilegal por falta de quorum.—Es cosa establecida y admitida por ambas partes que al reanudarse la sesion estaban presentes los 12 miembros del grupo llamado "Senado de Cuenco" mas tres senadores del grupo llamado "Senado de Avelino". En esta coyuntura el Senador Mabanag, del grupo de Cuenco, suscito la cuestion del quorum, de cuyas resultas se ordeno por el Senador Arranz, que entonces presidia la sesion, la lectura de la lista. Tambien es cosa establecida en autos y admitida por ambas partes que al comenzar el roll call o lectura de la lista, los tres senadores del grupo de Avelino salieron del salon y solamente respondieron al roll call los 12 senadores del grupo de Cuenco.

Resulta evidente de estos hechos que no habia quorum, por cuanto que componiendose el Senado de 24 miembros debidamente elegidos y cualificados, el quorum para celebrar sesion valida debe ser de 13 miembros. Tanto la jurisprudencia federal como la de los estados de la Union americana esta repleta de decisiones en las que se ha sentado firmemente la doctrina de que la base para determinar el quorum legislativo es el numero total de miembros elegidos y debidamente cualificados de cada camara. En el presente caso, como se ha dicho, ese numero total es 24. Por tanto, el grupo Cuenco no podia seguir celebrando validamente sesion, en vista de la falta de quorum. De acuerdo con la Constitution y los reglamentos, el grupo Cuenco tenia ante si dos caminos para actuar: (a) suspender la sesion de dia en dia hasta obtener el necesario quorum; (b) o compeler la asistencia de suficientes senadores del otro grupo para constituir dicho quorum, pudiendo a dicho efecto ordenar inclusive el arresto de los huelguistas. (Constitution de Filipinas, art. VI, sec. 10, ap. 2; Reglamento del Senado, Cap. VI, arts. 23 y 24.3) Asi que todos los procedimientos efectuados por el grupo Cuenco en dicha sesion eran nulos e ilegales.

Se ha insinuado que el cambio de fraseologia en el precepto constitucional sobre quorum es significativo. Efectivamente en el texto original de 1935 se decia lo siguiente: "A majority of all the Members shall constitute a quorum to do business" * * *, mientras que en el texto enmendado de 1940 se dice: "A majority of each House shall constitute a quorum to do business" * * *. De esto se quiere deducir la consecuencia de que esta reforma habra sido por algo, y este algo acaso sea la posibilidad de una base menor de la totalidad de miembros para determinar la existencia de un quorum. El argumento, a mi juicio, es insostenible, por no llamarlo futil. Los autores de la enmienda no han hecho mas que copiar literalmente la fraseologia de la Constitution federal americana; y ya hemos visto que esta se ha interpretado en el sentido de que senala, como base para determinar el quorum, la totalidad de los miembros electos y cualificados de cada camara. Por tanto, el cambio fraseologico, en vez de denotar cambio en el significado, refuerza el sentido tradicional de que la base para la determinacion del quorum la totalidad de los miembros electos y cualificados de cada camara. Aparte de que es elemental en hermeneutica legal que una misma cosa puede expresarse en terminos diferentes.

Tambien se ha insinuado, con bastante ingenio, que en el caso que nos ocupa, la base mas racional para el quorum es 23, excluyendo al Senador Confesor que se halla en America, pero incluyendo al Senador Sotto, que si bien no pudo estar presente en la sesion de autos por estar gravemente enfermo, hallabase, sin embargo, en Manila susceptible en cualquier momento de ser llamado por el Senado. El fundamento de esta opinion es que para la determinacion del quorum no debe ser contado un miembro que esta fuera de la action coercitiva de la camara. La proposition es igualmente inaceptable. No solo no tiene ningun precedente en la jurisprudencia, sino que es convencional, arbitraria, sometiendo el quorum, que debe ser algo permanente, a ciertas eventualidades y contingencias. Hay que tener en cuenta que el precepto constitucional y la regla pertinente no establecen ninguna salvedad. Donde la ley no distingue, no debemos distinguir.

(4) Cual es el remedio.—No cabe duda de que una mayoria de Senadores tiene derecho a reorganizar el Senado en la forma que les plazca, siempre que ello se sujete a las normas prescritas por la Constitucion, las leyes y los reglamentos. En el presente caso el grupo Cuenco que al parecer forma la mayoria, por lo menos hasta la fecha, tiene en sus manos los instruments constitucionales y legales para efectuar una reorganization. Puede convocar

una sesion y compeler la asistencia de un numero suficiente de Senadores para formar quorum, ordenando el arresto si fuese necesario de dichos senadores. Esto en el supuesto de que el Senador Avelino y su grupo sigan boicoteando las sesiones del Senado para impedir la existencia de un quorum. Pero si el grupo Avelino acude voluntariamente al Senado, entonces los dos grupos pueden buenamente restaurar la normalidad constitucional, procediendo a efectuar la reorganization que desee y dicte la mayoria.

Hasta que esto se haga, el Senador Avelino es tecnicamente presidente del Senado. Es verdad que Avelino cometio una grave arbitrariedad ordenando el levantamiento de la sesion sin derecho y facultad para ello; pero una arbitrariedad no justifica otra arbitrariedad; la de destituirle por medios anticonstitucionales, ilegales y antireglamentarios. Los motivos de la action de Avelino y de la de sus adversarios no nos interesan para nada ni caen dentro de nuestra provincia; lo unico que nos concierne son sus repercusiones juridicas.

Es de suma importancia, sobre todo en estos momentos incipientes de la republica, el que mantengamos rigida e implacablemente la integridad de la Constitucion y de los procedimientos que prescribe. Solo de esta manera podremos evitar el ciego desbordamiento de las pasiones politicas y personales, con todas sus funestas consecuencias. A toda costa hay que impedir la formation de un clima politico, social o moral que facilite las cuarteladas, los pronunciamientos, los golpes de mano y de estado (coup d'main, coup d'etat)—eso que caracteriza la historia azarosa de las llamadas "banana republics". Un 19 Brumario solamente se puede prevenir imponiendo con todo rigor, sin blandas transigencias, la observancia de la Constitution y de las leyes y reglamentos que la implementan.

Voto, por tanto, en favor de la concesion del recurso interpuesto.

[1]"* * *. Article I, Section 5, of the Constitution of the United States, provides:

"Each House shall be the judge of the elections. . . . and a majority of each shall constitute a quorum to do business."

"Interpreting this provision, the Supreme Court of that country held in U.S. v. Ballin, Joseph & Co., 36 L. Ed. 321, 325:

"The Constitution provides that 'a majority of each (house) shall constitute a quorum to do business.' In other words, when a majority are present, the House is in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present. All that the Constitution requires is the presence of a majority, and when that majority are present, the power of the House arises."

"The same decision quoted with approval from Dillon, Mun. Corp., the following rule:

"* * * If all the members of the select body or committee, or if all the agents are assembled, or if all have been duly notified, and the minority refuse or neglect to meet with the others, a majority of those present may act, provided, those present constitute a majority of the whole number. In other words, in such case, a major part of the whole is necessary to constitute a quorum, and a majority of the quorum may act. If the major part withdraw so as to leave no quorum, the power of the minority to act is, in general, considered to cease."

"Quorum as used in U.S.C.A. Const. Art. 4, Sec. 8, providing that a majority of each house shall constitute a quorum to do business, is, for the purposes of the Assembly, not less than the majority of the whole number of which the house may be composed.

Vacancies from death, resignation or failure ot elect cannot be deducted in ascertaining the quorum." (Opinion of Justices, 12 Fla. 653)

[2] A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties as such House may provide.

[3] CHAPTER VI-The house-Sec. 23. A majority of the Senators shall constitute a quorum to do business.

"SEC. 24. Whenever the question of quorum is raised by any Senator in any session, the Chair shall immediately order a roll call and announce forthwith the result.

"This shall be done without debate. If after the roll call it appears that there is no quorum, a majority of the Senators present may order the Sergeant-at-arms to summon the attendance of absent Senators, and, if necessary, to compel their attendance, in which case the order to that effect shall not be subject of debate.

"SEC. 25. Only for a just cause may a Senator be excused from attending the session."

DISSENTING

TUASON, J.:

I agree with Mr. Justice Briones' dissenting opinion, that the twelve senators who elected Senator Cuenco Acting President of the Senate did not constitute a quorum and, consequently, that his election was illegal.

It appears to me that the basis for computing a quorum of the Senate is the number of senators who have been elected and duly qualified and who have not ceased to be senators by death or legal disqualification. If this were not so, what is the standard of computation? No satisfactory, reasonable alternative has been or can be offered.

Absence abroad cannot be a disqualification unless by such absence, under the Constitution, a member of the Senate loses his office, emoluments, and other prerogatives, temporarily or permanently. There is no claim that this happens when a senator leaves the Philippines. If ready availability of the senators' presence at the session be the criterion, then serious illness or being in a remote island with which Manila has no regular means of communication should operate to eliminate the sick or absent members from the counting for the purpose of determining the presence of a majority.

The distinction made between absentees from legislative sessions who are in the Philippines and absentees who are in a foreign country is, to my mind, arbitrary and unreasonable. From both the theoretical and the practical points of view, it has no reason for being. Trips abroad by members of Congress are sometimes found necessary to fulfill their missions. If we test the interpretation by its consequences, its unsoundness and dangers become more apparent. The interpretation would allow any number of legislators, no matter how small, to transact business so long as it is a majority of the legislators present in the country. Nothing in my opinion could have been farther from the minds of the authors of the Constitution than to permit, under circumstances, less than a majority of the chosen and qualified representatives of the people to approve measures that might vitally affect their lives, their liberty, happiness and property. The necessity of arresting absent members to complete a quorum is too insignificant, compared with the necessity of the attendance of an absolute majority, to make unavailability to arrest a factor for ruling out absentees who are beyond the legislature's process. The Congress is eminently a law-making body and is little concerned with jurisdiction over its members. The power to order arrest is an emergency measure and is rarely resorted to. Viewed in this light, it is doubtful if the authority to arrest could always afford a satisfactory remedy even in the cases of members who were inside the Philippine territory. This is especially true in the United States of America, after whose form of government ours is patterned and whose territorial possessions extend to the other side of the globe.

This case is easily distinguishable from *Vera vs. Avelino*, (77 Phil., 192), and *Mabanag vs. Lopez Vito*, (78 Phil., 1).

In those cases the petitions were directed against an action of a recognized Senate exercising authority within its own domain. Here the process sought is to be issued against an appointee of a senate that, it is alleged was not validly constituted to do business because, among other reasons alleged, there was no quorum. The Court is not asked to interfere with an action of a coordinate branch of the government so much as to test the legality of the appointment of the respondent.

Section 1, Rule 68, of the Rules of Court provides:

"An action for the usurpation of office or franchise may be brought in the name of the Republic of the Philippines against:

(a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, or a franchise, or an office in a corporation created by authority of law;

* * * * *

This provision by its terms extends to every office. Its scope does not exclude officers appointed by the legislative branch of the government. Although this Court has no control over either branch of the Congress, it does have the power to ascertain whether or not one who pretends to be its officer is holding his office according to law or the Constitution. Political questions as a bar to jurisdiction can only be raised by the supreme power, by the legislature, and not by one of its creatures. (*Luther vs. Border*, 48 U. S. 7 How. 1, 12 Law ed., 581.) If there were two lesser officers of the Senate appointed by different factions thereof and contesting each other's right to the office, it would not be the Senate but the Court which would be called upon to decide the controversy. There is more reason for the Court to intervene when the office of the President of the Senate is at stake. The interests of the public are being greatly imperiled by the conflicting claims, and a speedy determination of the same is imperatively demanded, in the interest of good government and public order.

Fundamentally this case is analogous to *Attorney General, ex rel. Werts vs. Rogers*, 23 Lawyers' Reports, annotated, 354, to which I am indebted for much of the reasoning adduced in this dissent on the question of this Court's jurisdiction.

Petition dismissed.

March 14, 1949

RESOLUTION ON MOTION FOR RECONSIDERATION

Considering the motion for reconsideration filed by petitioner in case G.R. No. L-2821, *Jose Avelino vs. Mariano J. Cuenco*, the Court, without prejudice to writing later an extended opinion, has resolved, by a majority of seven, to assume jurisdiction over the case in the light of subsequent events which justify its intervention; and, partly for the reasons stated in the first resolution of this Court and partly upon the grounds stated by Mr. Justice Feria, Mr. Justice Perfecto, and Mr. Justice Briones in their separate opinions, to declare that there was a quorum at the session where respondent Mariano J. Cuenco was elected acting Senate President.

The Chief Justice agrees with the result of the majority's pronouncement on the quorum upon the ground that, under the peculiar circumstances of the case, the constitutional requirement in that regard has become a mere formalism, it appearing from the evidence that any new session with a quorum would result in the respondent's election as Senate President, and that the Cuenco group, taking cue from the dissenting opinions, has been trying

to satisfy such formalism by issuing compulsory processes against senators of the Avelino group, but to no avail, because of the latter's persistent efforts to block all avenues to constitutional processes. For this reason, he believes that the Cuenco group has done enough to satisfy the requirements of the Constitution and that the majority's ruling is in conformity with substantial justice and with the requirements of public interest.

The judgment of the Court is, therefore, that respondent Mariano J. Cuenco has been legally elected as Senate President and the petition is dismissed, with costs against petitioner.

Mr. Justice Paras concurs in the result. Mr. Justice Bengzon dissents on the question of jurisdiction but concurs on the question of quorum.

Mr. Justice Tuason concurs on the question of jurisdiction but dissents on that of quorum.

Mr. Justice Montemayor dissents on the question of jurisdiction and reserves his vote on the question of quorum.

Mr. Justice Reyes reserves the right to express the reasons for his vote.

CONCURRING

FERIA, J.:

In the case of Vera et al. vs. Avelino et al., (77 Phil., 192), the principal question raised was whether this Supreme Court had jurisdiction to set aside the Pendatun resolution ordering that petitioners Vera, Diokno and Romero shall not be sworn to nor seated as members of the Senate, and compel the respondents to permit them to occupy their seat, on the ground that the respondents had no power to pass said resolution, because it was contrary to the provisions of Sec. 11, Article VI, of the Constitution, which created the Electoral Tribunal for the Senate as well as for the House of Representatives, and provided that said Tribunal shall be sole judge of all contests relating to the election returns and qualifications of their respective members. Respondents Avelino et al., who were represented by Senators Vicente Francisco and the Solicitor General, impugned the jurisdiction of this Court to take cognizance of said case on the ground that the question therein involved was a political question, and petitioners Vera et al., who were represented by Attorney Jose W. Diokno, who is now one of the attorneys for respondents, who now contends that this Supreme Court has no jurisdiction over the present case, then maintained that this Court had jurisdiction.

And in the case of Mabanag et al. vs. Jose Lopez Vito et al., 78 Phil., 1, the question involved was whether it was within the jurisdiction of this Court to take cognizance of the case and prohibit the respondents from enforcing the "Congressional Resolutions of both Houses proposing an amendment to the Constitution of the Philippines to be appended as an ordinance thereto", granting certain rights to the citizens of the United States of America in the Philippines, on the ground that it was null and void because it was not passed by the vote of three-fourths of all the members of the Senate and House of Representatives, voting separately, as required by Sec. 1, Art. XV, of the Constitution, since if the Members of Congress who were not allowed to take part had been counted, the affirmative votes in favor of the proposed amendment would have been short of the necessary threefourths vote in either branch of Congress. Petitioners Mabanag et al. contended that the Court had jurisdiction and the respondents maintained the contrary on the ground that the question involved was a political one and within the exclusive province of the Legislature.

The theory of Separation of Powers as evolved by the Courts of last resort from the State Constitutions of the United States of America, after which our own is patterned, has given rise to the distinction between justiceable questions which fall within the province of the judiciary, and political questions which are not within the

jurisdiction of the judiciary and are to be decided, under the Constitution, by the People in their sovereign capacity or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government, except to the extent that the power to deal with such question has been conferred upon the court by express or statutory provision. Although it is difficult to define a political question as contradistinguished from a justiciable one, it has been generally held that the first involves political rights which consist in the power to participate, directly or indirectly, in the establishment or management of the government, while justiciable questions are those which affect civil, personal or property rights accorded to every member of the community or nation.

Under such theory of Separation of Powers, the judicial Supremacy is the power of judicial review in actual and appropriate cases and controversies that present justiceable issues, which fall within the jurisdiction or power allocated to the judiciary; but when the issue is a political one which comes within the exclusive sphere of the legislative or executive department of the Government to decide, the judicial department or Supreme Court has no power to determine whether or not the act of the Legislature or Chief Executive is against the Constitution. What determines the jurisdiction of the courts is the issue involved, and not the law or constitutional provision which may be applied. Divorced from the remedy sought, the declaration of this Court on the matter of constitutionality or unconstitutionality of a legislative or executive act, would be a mere advisory opinion, without a coercive force.

Relying on the ruling laid down in *Severino vs. Governor General*, 16 Phil., 366; *Abueva vs. Wood*, 45 Phil., 612; and *Alejandrino vs. Quezon*, 46 Phil., 83, the Supreme Court upheld the contention of said respondents in both cases that the question involved was a political question and therefore this Court had no jurisdiction. I was one of the three Justices who held that this Court had jurisdiction, and dissented from the decision of the majority.

When the present case was first submitted to us, I concurred with the majority, in view of the ruling of the Court in said two cases, which constitutes a precedent which is applicable a fortiori to the present case and must, therefore, be followed by virtue of the doctrine or maxim of stare decisis, and in order to escape the criticism voiced by Lord Bryce in *American Commonwealth* when he said that "The Supreme Court has changed its color i. e., its temper nad tendencies, from time to time according to the political proclivities of the men who composed it * * *. Their action flowed naturally from the habits of thought they had formed before their accession to the bench and from the sympathy they could not but feel for the doctrine on whose behalf they had contended." (*The ANNALS of the American Academy of Political and Social Science*, May, 1936, p. 50).

Now that the petitioner, who obtained a ruling favorable to his contention in the Vera-Avelino case, supra, insists in his motion for reconsideration that this Court assume jurisdiction and decide whether or not there was quorum in the session of the Senate of February 21, 1949, and is willing to abide by the decision of this Court (notwithstanding the aforementioned precedent), and several of the Justices, who have held before that this Supreme Court had no jurisdiction, now uphold the jurisdiction of this Court, I gladly change my vote and concur with the majority in that this court has jurisdiction over cases like the present in accordance with my stand in the above mentioned cases, so as to establish in this country the judicial supremacy, with the Supreme Court as the final arbiter, to see that no one branch or agency of the government transcends the Constitution, not only in justiciable but political questions as well.

But I maintain my opinion and vote in the resolution sought to be reconsidered, that there was a quorum in the session of the Senate of February 21, 1949, for the following reasons:

Art. 3 (4) Title VI of the Constitution of 1935 provided that "the majority of all the members of the National Assembly constitute a quorum to do business" and the fact that said provision was amended in the Constitution of

practico. Al pueblo interesa que la Legislatura reanude su funcionamiento normal. Fuerza es transigir, pues, para que liaya seis votos que sostengan que este Tribunal tiene jurisdiccion. Si insisto en mi opinion anterior, fracasara todo esfuerzo de reajuste de nuestras opiniones para dar fin a la crisis en el Senado.

El Sr. Presidente del Tribunal y los Sres. Magistrados Perfecto y Briones opinan hoy que hubo quorum en la continuation de la sesion despues de la marcha del Senador Avelino y companeros. Con ellos, ya hay siete votos que sostienen que las resoluciones votadas por los doce senadores son legales y validas. Pero para dar fuerza legal a esta conclusion, es indispensable que el Tribunal la declare con jurisdiccion. Contribuyo mi grano de arena a la feliz conclusion de un conflicto que esta minando el interes publico: voto hoy por que el Tribunal asuma jurisdiccion para dar fuerza a mi opinion anterior de que los doce senadores formaban quorum.

Debe denegarse la motion de reconsideration.

CONCURRING

PERFECTO, J.:

The problem of democracy must be faced not in the abstract but as practical questions, as part of the infinitely motley aspects of human life. They cannot be considered as scientific propositions or hypothesis independently from the actual workings of the unpredictable flights of the spirit which seem to elude the known laws of the external world. Experience appears to be the only reliable guide in judging human conduct. Birth and death rates and incidence of illness are compiled in statistics for the study and determination of human behavior, and statistics are one of the means by which the teaching of experience may render their quota of contribution in finding the courses leading to the individual well-being and collective happiness.

The way this case has been disposed of by the Supreme Court, upon the evidence coming from many quarters and sectors, is provenly far from being conducive to democratic eudaemonia. We intended to settle the controversy between petitioner and respondent, but actually we left hanging in the air the important and, indeed, vital questions. They posed before us in quest of enlightenment and reasonale and just decision. We left the people confused and the country in a quandary.

We can take judicial notice that legislative work has been at a standstill; the normal and ordinary functioning of the Senate has been hampered by the non-attendance to sessions of about one-half of the members; warrants of arrest have been issued, openly defied, and remained unexecuted like mere scraps of paper, notwithstanding the fact that the persons to be arrested are prominent persons with well-known addresses and residences and have been in daily contact with news reporters and photographers. Farce" and mockery have been interspersed with actions and movements provoking conflicts which invite bloodshed.

It is highly complimentary to our Republic and to our people that, notwithstanding the overflow of political passions and the irreconcilable attitude of warring factions, enough self-restraint has been shown to avoid any clash of forces. Indeed there is no denying that the situation, as obtaining in the upper chamber of Congress, is highly explosive. It had echoed in the House of Representatives. It has already involved the President of the Philippines. The situation has created a veritable national crisis, and it is apparent that solution cannot be expected from any quarter other than this Supreme Court, upon which the hopes of the people for an effective settlement are pinned.

The Avelino group, composed of eleven senators, almost one-half of the entire body, are unanimous in belief that this Court should take jurisdiction of the matter and decide the merits of the case one way or another, and they are

committed to abide by the decision regardless of whether they believe it to be right or mistaken. Among the members of the so-called Cuenco group, there are several Senators who in a not remote past (See *Vera vs. Avelino*, 77 Phil., 192 and *Mabanag vs. Lopez Vito*, 78 Phil., 1) have shown their conviction that in cases analogous to the present the Supreme Court has and should exercise jurisdiction. If we include the former attitude of the senator who is at present abroad, we will find out that they are in all eighteen (18) senators who at one time or another recognized the jurisdiction of the Supreme Court and have pinned and are pinning their hopes on the Supreme Court for the settlement of such momentous controversies as the one now challenging our judicial statesmanship, our patriotism, our faith in democracy, the role of this Court as the last bulwark of the Constitution.

In the House of Representatives unmistakable statements have been made supporting the stand of the eighteen (18) senators, or of three-fourths (3/4) of the entire Upper Chamber, in support of the jurisdiction of the Supreme Court and of the contention that we should decide this case on the merits.

Judicial "hands-off" policy is, in effect, a showing of official inferiority complex. Consequently like its parallel in the psychological field, it is premised on notions of reality fundamentally wrong. It is an upshot of distorted past experience, warping the mind so as to become unable to have a healthy appraisal of reality in its true form.

It is futile to invoke precedents in support of such an abnormal judicial abdication. The decision in the *Alejandrino vs. Quezon*, 46 Phil., 83, is absolutely devoid of any authority. It was rendered by a colonial Supreme Court to suit the imperialistic policies of the masters. That explains its glaring inconsistencies.

Also frivolous is to invoke the decisions in *Vera vs. Avelino*, (77 Phil., 192), and *Mabanag vs. Lopez Vito*, (78 Phil., 1), both patterned after the colonial philosophy pervading the decision in *Alejandrino vs. Quezon*, (46 Phil., 83.) Judicial emancipation must not lag behind the political emancipation of our Republic. The judiciary ought to ripen into maturity if it has to be true to its role as spokesman of the collective conscience, of the conscience of humanity.

For the Supreme Court to refuse to assume jurisdiction in this case is to violate the Constitution. Refusal to exercise the judicial power vested in it is to transgress the fundamental law. This case raises vital constitutional questions which no one can settle or decide if this Court should refuse to decide them. It would be the saddest commentary to the wisdom, foresight and statesmanship of our Constitutional Convention to have drafted a document leaving such a glaring hiatus in the organization of Philippine democracy if it failed to entrust to the Supreme Court the authority to decide such constitutional questions.

Our refusal to exercise jurisdiction in this case is as unjustifiable as the refusal of senators on strike to attend the sessions of the Senate and to perform their duties. A senatorial walkout defeats the legislative power vested by the Constitution in Congress. Judicial walkouts are even more harmful than a laborers' strike or a legislative impasse. Society may go on normally while laborers temporarily stop to work. Society may not be disrupted by delay in the legislative machinery. But society is menaced with dissolution in the absence of an effective administration of justice. Anarchy and chaos are its alternatives.

There is nothing so subversive as official abdication or walkout by the highest organs and officers of government. If they should fail to perform what is the use for minor officials and theirs? The constitutional question of be left unanswered.

Respondent's theory that twelve (12) senators, the majority required for the Senate quorum is absolutely unacceptable. The verbal changes made in the constitutional amendment, upon the creation of Congress to replace the National Assembly, have not affected the substance of the constitutional concept of quorum in both the

original and amended contexts. The words "all the members" used in the original, for the determination of the quorum at the National Assembly, have been eliminated in the Amendment, as regards the houses of Congress, because they were a mere surplusage. The writer of this opinion, Member of the Second National Assembly and in his capacity as Chairman of the Committee on Third Heading, was the one who proposed the elimination of said surplusage, because "majority of each House" can mean only "the majority of the members thereof, without excluding anyone, that is, of all the members.

The word majority is a mathematical word. It has, as such, a precise and exact mathematical meaning. A majority means more than one-half ($1/2$). It can never be identified with one-half ($1/2$) or less than one-half ($1/2$). It involves a comparative idea in which the antilexis between more and less is etched in the background reality as a metaphysical absolute as much as the tithesis of all opposites, and in the same way that the affirmative cannot be confused with the negative, the creation with nothingness, existence with non-existence, truth with falsehood.

The Senate is composed of twenty four (24) senators, majority of said senators cannot be less than thirteen (13). Twelve (12) do not constitute the majority in a body composed of twenty four (24) units. This is so plain that it is not necessary to have the mathematical genius of Pythagoras, Euclid, Newton and Pascal to see it. Any elementary school student may immediately perceive it.

No amount of mental gymnastics or juristic logomachy will convince anyone that one of two equal numbers constitute a majority part of the two numbers combined. The five (5) fingers of one hand cannot be the majority of the combined ten (10) fingers of the two hands. Majority is incompatible with equality. It implies the idea of superiority.

Majority is a derivative of major which, in its turn, is a derivative of the Latin "magnus," meaning great. Majority means the greater of two numbers that are regarded as parts of a total: the number greater than half. It implies a whole of which constitutes the greater part or portion. It presupposes the existence of a total and, in the present case, the total number of twenty four (24) senators composing the Senate.

The above pronouncements notwithstanding, we are now inclined to conclude that for the purpose of choosing respondent merely as Acting President of the Senate, as an emergency measure to fill the vacuum created by petitioner's desertion of the office of presiding officer by his walkout in the session of February 21, 1949, the presence of the twelve (12) senators was enough quorum.

The Constitution provides:

"(2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties as such House may provide." (Sec. 10, Article VI.)

The "smaller number" referred to in the above provision has to act collectively and cannot act as a collective body to perform the functions specifically vested in it by the Constitution unless presided by one among their number. The collective body constituted by said "smaller number" has to take measure to "compel the attendance of absent members in such manner and under such penalties as such House may provide," so as to avoid disruption in the functions of the respective legislative chamber. Said "smaller number" may be twelve or even less than twelve senators to constitute a quorum for the election of a temporary or acting president, who will have to act until normalcy is restored.

As events have developed after the decision in this case has been rendered on March 4, 1949, the picture of petitioner's attitude has acquired clearer and more definite form, and that picture brings us to the conclusion that this case turned into a moot one.

At the hearing of this case for the reception of evidence before Mr. Justice Bengzon, Senator Mariano J. Cuenco, the respondent, on cross-examination by Senator Vicente J. Francisco, counsel for petitioner, manifested that he was looking for an opportunity to renounce the position of Acting President of the Senate, and that if Senator Jose Avelino, the petitioner, should attend the sessions of the Senate and insist on claiming the presidency thereof, he, the respondent, would allow petitioner to preside over the sessions. He would only make of record his protest, and never resort to force or violence to stop petitioner from presiding over said sessions.

The last statement as to allowing petitioner to preside over the sessions was made by respondent under oath twice, and petitioner, although he refused to attend the hearing of this case, so much so that, instead of testifying, he just signed an affidavit which, under the rules of procedure, is inadmissible as incompetent and is as valueless as an empty gesture, could not fail to learn about respondent's testimony, because it was given publicly, it is recorded in the transcript, and petitioner's counsel, Senator Francisco, would certainly not have failed to inform him about it.

Notwithstanding respondent's testimony, petitioner failed to take advantage of it and continues to refuse to attend the sessions of the Senate since he and his group of senators have walked out from the historic Monday session of February 21, 1949.

If petitioner is sincere in his desire of presiding over the sessions of the Senate, for which reason he has sought the help of the Supreme Court, why has he failed to take advantage of the commitment made under oath by respondent since February 26, 1949? Why has he, since then, been not only failing but refusing to attend the sessions and preside over them? Why is it that petitioner and his group of Senators have given occasion, in fact, compelled, the senators of the Cuenco group to issue warrants of arrest to remedy the lack of quorum that has been hampering the sessions of the Senate? Why is it that the Senate sergeant-at-arms, his subordinates and the peace officers helping him, have to be hunting for the senators of the Avelino group in a, so far, fruitless if not farcical endeavor to compel them to attend the sessions?

The events that have been unfolding before our eyes, played up everyday in screaming headlines in all newspapers and of which, by their very nature, we cannot fail to take judicial notice, considered, weighed and analyzed in relation with the happenings in the Friday and Monday sessions, February 18 and 21, 1949, have driven into our mind the conviction that, although petitioner would hold fast to the authority, powers and prestige which command the position of President of the Senate, he actually has no earnest desire to preside over the sessions of the Senate, the most characteristic and important function of President of the Senate.

His refusal to attend the sessions, notwithstanding respondent's commitment to allow him to preside over them, can and should logically be interpreted as an abandonment which entails forfeiture of office. (*Santiago vs. Agustin*, 46 Phil., 14; *Ortiz vs. De Guzman*, 49 Phil., 371; 46 *Corpus Juris* p. 980-981; *Wilkinson vs. City of Birmingham*, 68 So. 999; 43 *American Jurisprudence* p. 27).

What are petitioner's reasons for refusing to attend the Senate sessions? What are his group's reasons? They say that they want a square decision on the merits of this case, for which reason the motion for reconsideration has been filed. Although we believe that the Supreme Court failed to perform its official duty in refusing, by majority vote, to exercise jurisdiction in this case, and the inconsistency in the position taken by some Members of the majority has only increased public bewilderment, there are strong grounds to conclude that there are other stronger reasons for petitioner and his group to sabotage the sessions of the Senate.

If this Court had decided this case as the four dissenters would have it, there cannot be any doubt that the Senate impasse would have been settled many days ago and, with it, the present national crisis hampering and armstringing the legislative machinery.

The gravity of the situation cannot be gainsaid. The showings of open defiance to warrants of arrest are highly demoralizing. People are asking and wondering if senators are placed above the law that they can simply ignore warrants of arrests and despise the authority of the officers entrusted with the execution. Threats of violence pervade the air. Congress is neglecting the public interests that demand remedial legislation. The present state of confusion, of alarm, of bewilderment, of strife would have ended if, for the reasons we have stated in our dissenting opinion, the Supreme Court would have ordered petitioner's reposition.

Once petitioner had been recognized to continue to be the President of the Senate, he would certainly have attended the Senate sessions to preside over them. Then the sessions with senators of the Avelino group attending, would have been held with the constitutional quorum. The twelve senators of the Cuenco group would have the opportunity of voting solidly to ratify or to reenact all the disputed actuations of the rump session of February 21, 1949, and there is no doubt that they would have succeeded in ousting petitioner and electing respondent to the position of President of the Senate.

Everything then would have followed the normal course. With the presence of a clear and unquestionable quorum, petitioner and his followers would have no ground for any complaint, and respondent could have assumed the Senate's presidency without any hitch.

Of course, petitioner and the senators of his group might have resorted again to the same strategy, by staging the same walkout with which they divested of quorum the rump session of February 21, 1949, but it is not probable that they would have taken the same course of action after this Court, almost unanimously declared that petitioner's action in adjourning the session of February 21, 1949, was arbitrary and illegal. At any rate, the Senators of the Cuenco group would have been by then well prepared to have orders of arrest ready for immediate execution before the striking senators could leave the building housing the session hall.

The abnormal situation in the Senate must be stopped at once. Legislation must go on. The serious charges filed or may be filed against petitioner, respondent and other senators demand imperatively investigation and action to acquit the innocent and to punish the guilty ones. Public interest cannot demand less.

Under such circumstances, petitioner has lost all title to claim the position in controversy. This result will not legally or practically close any door for him to again seek the position by attending the sessions of the Senate and by securing a majority that would support him in his bid.

The motion for reconsideration should be denied.

Jurisdiction assumed, in the light of subsequent events.

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