

J. ANTONIO ARANETA, PETITIONER, VS. RAFAEL DINGLASAN, JUDGE OF FIRST INSTANCE OF MANILA, AND JOSE P. BENZON, FISCAL OF CITY OF MANILA, RESPONDENTS.*G.R. No. L-2044. August 26, 1949*

Ponente: TUASON, J.

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Three of these cases were consolidated for argument and the other two were argued separately on other dates. Inasmuch as all of them present the same fundamental question which, in our view, is decisive, they will be disposed of jointly. For the same reason we will pass up the objection to the personality or sufficiency of interest of the petitioners in case G. R. No. L-3054 and case G. R. No. L-3056 and the question whether prohibition lies in cases Nos. L-2044 and L-2756. No practical benefit can be gained from a discussion of these procedural matters, since the decision in the cases wherein the petitioners cause of action or the propriety of the procedure followed is not in dispute, will be controlling authority on the others. Above all, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, and technicalities of procedure. (Avelino vs. Cuenco, G. R. No. L-2821.)

The petitions challenge the validity of executive orders of the President avowedly issued in virtue of Commonwealth Act No. 671. Involved in Cases Nos. L-2044 and L-2756 is Executive Order No. 62, which regulates rentals for houses and lots for residential buildings. The petitioner, J. Antonio Araneta, is under prosecution in the Court of First Instance of Manila for violation of the provisions of this Executive Order, and prays for the issuance of the writ of prohibition to the Judge and the City Fiscal. Involved in Case L-3055 is Executive Order No. 192, which aims to control exports from the Philippines. In this case, Leon Ma. Guerrero seeks a writ of mandamus to compel the Administrator of the Sugar Quota Office and the Commissioner of Customs to permit the exportation of shoes by the petitioner. Both officials refuse to issue the required export license on the ground that the exportation of shoes from the Philippines is forbidden by this Executive Order. Case No. L-3054 relates to Executive Order No. 225, which appropriates funds for the operation of the Government of the Republic of the Philippines during the period from July 1, 1949 to June 30, 1950, and for other purposes. The petitioner, Eulogio Rodriguez, Sr., as a tax-payer, an elector, and president of the Nacionalista Party, applies for a writ of prohibition to restrain the Treasurer of the Philippines from disbursing money under this Executive Order. Affected in Case No. L-3056 is Executive Order No. 226, which appropriates P6,000,000.00 to defray the expenses in connection with, and incidental to, the holding of the national elections to be held in November, 1949. The petitioner, Antonio Barredo, as a citizen, tax-payer and voter, asks this Court to prevent "the respondents from disbursing, spending or otherwise disposing of that amount or any part of it."

Notwithstanding allegations in the petitions assailing the constitutionality of Act No. 671, the petitioners do not press the point in their oral argument and memorandum. They rest their case chiefly on the proposition that the Emergency Powers Act (Commonwealth Act No. 671) has ceased to have any force and effect. This is the basic question we have referred to, and it is to this question that we will presently address ourselves and devote greater

attention. For the purpose of this decision, only, the constitutionality of Act No. 671 will be taken for granted, and any dictum or statement herein which may appear contrary to that hypothesis should be understood as having been made merely in furtherance of the main thesis.

Act No. 671 in full is as follows:

"AN ACT DECLARING A STATE OF TOTAL EMERGENCY AS A RESULT OF WAR INVOLVING THE PHILIPPINES AND AUTHORIZING THE PRESIDENT TO PROMULGATE RULES AND REGULATIONS TO MEET SUCH EMERGENCY.

"Be it enacted by the National Assembly of the Philippines:

"SECTION 1. The existence of war between the United States and other countries of Europe and Asia, which involves the Philippines, makes it necessary to invest the President with extraordinary powers in order to meet the resulting emergency.

"SEC. 2. Pursuant to the provisions of Article VI, section 26, of the Constitution, the President is hereby authorized, during the existence of the emergency, to promulgate such rules and regulations as he may deem necessary to carry out the national policy declared in section 1 hereof. Accordingly, he is, among, other things, empowered (a) to transfer the seat of the Government or any of its subdivisions, branches, departments, offices, agencies or instrumentalities; (b) to re organize the Government of the Commonwealth including, the determination of the order of precedence of the heads of the Executive Department; (c) to create new subdivisions, branches, departments, offices, agencies or instrumentalities of government and to abolish any of those already existing; (d) to continue in force laws and appropriations which would lapse or otherwise become inoperative, and to modify or suspend the operation or application of those of an administrative character; (e) to impose new taxes or to increase, reduce, suspend or abolish those in existence; (f) to raise funds through the issuance of bonds or otherwise, and to authorize the expenditure of the proceeds thereof; (g) to authorize the national, provincial, city or municipal governments to incur in overdrafts for purposes that he may approve; (h) to declare the suspension of the collection of credits or the payment of debts; and (i) to exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce the authority.

"SEC. 3. The President of the Philippines shall as soon as practicable upon the convening of the Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted.

"SEC. 4. This Act shall take effect upon its approval and the rules and regulations promulgated hereunder shall be in force and effect until the Congress of the Philippines shall otherwise provide."

Section 26 of Article VI of the Constitution Provides:

"In time of war or other national emergency the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy."

Commonwealth Act No. 671 does not in term fix the duration of its effectiveness. The intention of the Act has to be sought for in its nature, the object to be accomplished, the purpose to be subserved, and its relation to the Constitution. The consequences of the various constructions offered will also be resorted to as additional aid to interpretation. We test a rule by its results.

Article VI of the Constitution provides that any law passed by virtue thereof should be "for a limited period." "Limited" has been defined to mean "restricted; bounded; prescribed; confined within positive bounds; restrictive in duration, extent or scope." (Encyclopedia Law Dictionary, 3rd Ed. 669; Black's Law Dictionary, 3rd Ed.,

1120.) The words "limited period" as used in the Constitution are beyond question intended to mean restrictive in duration.

Emergency, in order to justify the delegation of emergency powers, "must be temporary or it can not be said to be an emergency." (First Trust Joint Stock Land Bank of Chicago v. Adolph P. Arp., et al., 120 A.L.R. pp. 937-938.)

It is to be presumed that Commonwealth Act No. 671 was approved with this limitation in view. The opposite theory would make the law repugnant to the Constitution, and is contrary to the principle that the legislature is deemed to have full knowledge of the constitutional scope of its powers. The assertion that new legislation is needed to repeal the act would not be in harmony with the Constitution either. If a new and different law were necessary to terminate the delegation, the period for the delegation, it has been correctly pointed out, would be unlimited, indefinite, negative and uncertain; "that which was intended to meet a temporary emergency may become permanent law," (Peck v. Fink, 2 F (2d) 912); for Congress might not enact the repeal, and even if it would, the repeal might not meet with the approval of the President, and the Congress might not be able to override the veto. Furthermore, this would create the anomaly that, while Congress might delegate its powers by a simple majority, it might not be able to recall them except by a two-third vote. In other words, it would be easier for Congress to delegate its powers than to take them back. This is not right and is not, and ought not to be, the law. Corwin, President: Office and Powers, 1948 Ed., p. 160, says:

"It is generally agreed that the maxim that the legislature may not delegate its powers signifies at the very least that the legislature may not abdicate its powers. Yet how, in view of the scope that legislative delegations take nowadays, is the line between delegation and abdication to be maintained? Only, I urge, by rendering the delegated powers recoverable without the consent of the delegate; x x x."

Section 4 goes far to settle the legislative intention of this phase of Act No. 671. Section 4 stipulates that "the rules and regulations promulgated there under shall be in full force and effect until the Congress of the Philippines shall otherwise provide." The silence of the law regarding the repeal of the authority itself, in the face of the express provision for the repeal of the rules and regulations issued in pursuance of it, is a clear manifestation of the belief held by the National Assembly that there was no necessity to provide for the former. It would be strange if having no idea about the time the Emergency Powers Act was to be effective the National Assembly failed to make a provision for its termination in the same way that it did for the termination of the effects and incidents of the delegation. There would be no point in repealing or annulling the rules and regulations promulgated under a law if the law itself was to remain in force, since, in that case, the President could not only make new rules and regulations but he could restore the ones already annulled by the legislature.

More anomalous than the exercise of legislative functions by the Executive when Congress is in the unobstructed exercise of its authority is the fact that there would be two legislative bodies operating over the same field, legislating concurrently and simultaneously, mutually nullifying each other's actions. Even if the emergency powers of the President, as suggested, be suspended while Congress was in session and be revived after each adjournment, the anomaly would not be eliminated. Congress by a 2/3 vote could repeal executive orders promulgated by the President during congressional recess, and the President in turn could treat in the same manner, between sessions of Congress, laws enacted by the latter. This is not a fantastic apprehension; in two instances it materialized. In entire good faith, and inspired only by the best interests of the country as they saw them, a former President promulgated an executive order regulating house rentals after he had vetoed a bill on the subject enacted by Congress, and the present Chief Executive issued an executive order on export control after Congress had refused to approve the measure.

Quite apart from these anomalies, there is good basis in the language of Act No. 671 for the inference that the National Assembly restricted the life of the emergency powers of the President to the time the Legislature was

prevented from holding sessions due to enemy action or other causes brought on by the war. Section 3 provides:

"The President of the Philippines shall as soon as practicable upon the convening of the Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted."

The clear tenor of this provision is that there was to be only one meeting of Congress at which the President was to give an account of his trusteeship. The section did not say each meeting, which it could very well have said if that had been the intention. If the National Assembly did not think that the report mentioned in Section 3 was to be the first and last and did not think that upon the convening of the first Congress Act No. 671 would lapse, what reason could there be for its failure to provide in appropriate and clear terms for the filing of subsequent reports? Such reports, if the President was expected to continue making laws in the form of rules, regulations and executive orders, were as important, or as unimportant, as the initial one.

As a contemporary construction, President Quezon's statement regarding the duration of Act No. 671 is enlightening and should carry much weight, considering his part in the passage and in the carrying out of the law. Mr. Quezon, who called the National Assembly to a special session, who recommended the enactment of the Emergency Powers Act, if indeed he was not its author, and who was the very President to be entrusted with its execution, stated in his autobiography, "The Good Fight," that Act No. 671 was only "for a certain period" and "would become invalid unless reenacted." These phrases connote automatic extinction of the law upon the conclusion of a certain period. Together they denote that a new legislation was necessary to keep alive (not to repeal) the law after the expiration of that period. They signify that the same law, not a different one, had to be repassed if the grant should be prolonged.

What then was the contemplated period? President Quezon in the same paragraph of his autobiography furnished part of the answer. He said he issued the call for a special session of the National Assembly "when it became evident that we were completely helpless against air attack, and that it was most unlikely the Philippine Legislature would hold its next regular session which was to open on January 1, 1942." It can easily be discerned in this statement that the conferring of enormous powers upon the President was decided upon with specific view to the inability of the National Assembly to meet. Indeed no other factor than this inability could have motivated the delegation of powers so vast as to amount to an abdication by the National Assembly of its authority. The enactment and continuation of a law so destructive of the foundations of democratic institutions could not have been conceived under any circumstance short of a complete disruption and dislocation of the normal processes of government. Anyway, if we are to uphold the constitutionality of the act on the basis of its duration, we must start with the premise that it fixed a definite, limited period. As we have indicated, the period that best comports with the constitutional requirements and limitations, with the general context of the law and with what we believe to be the main if not the sole *raison d'être* for its enactment, was a period coextensive with the inability of Congress to function, a period ending with the convening of that body.

It is our considered opinion, and we so hold, that Commonwealth Act No. 671 became inoperative when Congress met in regular session on May 25, 1946, and that Executive Orders Nos. 62, 142, 225 and 226 were issued without authority of law. In setting the first regular session of Congress instead of the first special session which preceded it as the point of expiration of the Act, we think we are giving effect to the purpose and intention of the National Assembly. In a special session, the Congress may "consider general legislation or only such subjects as he (President) may designate." (Section 9 Art. VI of the Constitution.) In a regular session, the power of Congress to legislate is not circumscribed except by the limitations imposed by the organic law.

Having arrived at this conclusion, we are relieved of the necessity of deciding the question as to which department of government is authorized to inquire whether the contingency on which the law is predicated still exists. The right of one or another department to declare the emergency terminated is not in issue. As a matter of fact, we

have endeavored to find the will of the National Assembly—call that will an exercise of the police power or the war power—and, once ascertained, to apply it. Of course, the function of interpreting statutes in proper cases, as in this, will not be denied to the courts as their constitutional prerogative and duty. In so far as it is insinuated that the Chief Executive has the exclusive authority to say that war has not ended, and may act on the strength of his opinion and findings in contravention of the law as the courts have construed it, no legal principle can be found to support the proposition. There is no pretense that the President has independent or inherent power to issue such executive orders as those under review. We take it that the respondents, in sustaining the validity of these executive orders rely on Act No. 600, Act No. 620, or Act No. 671 of the former Commonwealth and on no other source. To put it differently, the President's authority in this connection is purely statutory, in no sense political or directly derived from the Constitution.

Act No. 671, as we have stressed, ended *ex proprio vigore* with the opening of the regular session of Congress on May 25, 1946. Acts Nos. 600 and 620 contain stronger if not conclusive indication that they were self-liquidating. By express provision the rules and regulations to be eventually made in pursuance of Acts Nos. 600 and 620, respectively approved on August 19, 1940 and June 6, 1941, were to be good only up to the corresponding dates of adjournment of the following sessions of the legislature, "unless sooner amended or repealed by the National Assembly." The logical deduction to be drawn from this provision is that in the minds of the lawmakers the idea was fixed that the Acts themselves would lapse not later than the rules and regulations. The design to provide for the automatic repeal of those rules and regulations necessarily was predicated on the consciousness of a prior or at best simultaneous repeal of their source. Were not this the case, there would arise the curious spectacle, already painted, and easily foreseen, of the Legislature amending or, repealing rules and regulations of the President while the latter was empowered to keep or return them into force and to issue new ones independently of the National Assembly. For the rest, the reasoning heretofore adduced against the asserted indefinite continuance of the operation of Act No. 671 equally applies to Acts Nos. 600 and 620.

The other corollary of the opinion we have reached is that the question whether war, in law or in fact, continues, is irrelevant. If we were to assume that actual hostilities between the original belligerents are still raging, the conclusion would not be altered. After the convening of Congress new legislation had to be approved if the continuation of the emergency powers, or some of them, was desired. In the light of the conditions surrounding the approval of the Emergency Powers Act, we are of the opinion that the "state of total emergency as a result of war" envisaged in the preamble referred to the impending invasion and occupation of the Philippines by the enemy and the consequent total disorganization of the Government, principally the impossibility for the National Assembly to act. The state of affairs was one which called for immediate action and with which the National Assembly would not be able to cope. The war itself and its attendant chaos and calamities could not have necessitated the delegation had the National Assembly been in a position to operate.

After all the criticisms that have been made against the efficiency of the system of the separation of powers, the fact remains that the Constitution has set up this form of government, with all its defects and shortcomings, in preference to the commingling of powers in one man or group of men. The Filipino people by adopting parliamentary government have given notice that they share the faith of other democracy-loving peoples in this system, with all its faults, as the ideal. The point is, under this framework of government, legislation is preserved for Congress all the time, not excepting periods of crisis no matter how serious. Never in the history of the United States, the basic features of whose Constitution have been copied in ours, have the specific functions of the legislative branch of enacting laws been surrendered to another department unless we regard as legislating the carrying out of a legislative policy according to prescribed standards; no, not even when that Republic was fighting a total war, or when it was engaged in a life and death struggle to preserve the Union. The truth is that under our concept of constitutional government, in times of extreme perils more than in normal circumstances

"the various branches, executive, legislative, and judicial", given the ability to act, are called upon "to perform the duties and discharge the responsibilities committed to them respectively."

These observations, though beyond the issue as formulated in this decision, may, we trust, also serve to answer the vehement plea that for the good of the Nation, the President should retain his extraordinary powers as long as turmoil and other ills directly or indirectly traceable to the late war harass the Philippines.

Upon the foregoing considerations, the petitions will be granted. In order to avoid any possible disruption and interruption in the normal operation of the Government, we have deemed it best to depart in these cases from the ordinary rule relative to the period for the effectivity of decisions, and to decree, as it is hereby decreed, that this decision take effect fifteen days from the date of the entry of final judgment provided in Section 8 of Rule 53 of the Rules of Court in relation to Section 2 of Rule 35. No costs will be charged.

Moran, C. J., concurs in part.

Ozaeta, J., concurs.

Paras, J., concurs and also in separate opinion.

Feria, J., concurs in so far as the decision is not in conflict with his separate opinion.

CONCURRING

MORAN, C. J.:

I agree with the opinion prepared by Mr. Justice Tuason, except on the points hereunder discussed.

I believe, on the one hand, that the Emergency Powers of the President had ceased not in May 1946, when Congress held its regular sessions, as Mr. Justice Tuason and Mr. Justice Feria maintain, but on June 9, 1945, when Congress convened in a special session to consider general legislation. The emergency contemplated in Commonwealth Act No. 671, is "total emergency" which means the state of actual war involving the Philippines, with the impending Invasion and occupation of our country by the enemy and the consequent total disorganization and paralization of the Government, principally, the impossibility for the National Assembly to act. This was the only reason, and justification for the total relinquishment of legislative power by Congress in favor of the Chief Executive under Commonwealth Act No. 671. Such relinquishment was total because the emergency was also total. Clearly, therefore, the inability of Congress to act was the soul of the law, and the moment such inability ceased, the total emergency also ceased and the law likewise ceased to validly exist. On June 9, 1945, the Congress of the Philippines convened in a Special Session "to adopt such measures as may be necessary to meet the existing emergency" and "for the purpose of considering general legislation." I hold that from that date, June 9, 1945, Congress was able and ready to act on all matters, and the emergency powers delegated to the President in Commonwealth Act No. 671, naturally ceased to exist.

Upon the other hand, while I believe that the Emergency Bowers had ceased in June 1945, I am not prepared to hold that all executive orders issued thereafter under Commonwealth Act No. 671, are per se null and void. It must be borne in mind that these executive orders had been issued in good faith and with the best of intentions by three successive Presidents, and some of them may have already produced extensive effects in the life of the nation. We have, for instance, Executive Order No. 73, issued on November 12, 1945, appropriating the sum of Php.6,750,000.00 for public works; Executive Order No. 86, issued on January 7, 1946, amending a previous order regarding the organization of the Supreme Court; Executive Order No. 89, issued on January 1, 1946, reorganizing the Courts of First Instance Executive Order No. 184, issued on November 19, 1948, controlling rice and palay to combat hunger; and other executive orders appropriating funds for other purposes. The consequences

of a blanket nullification of all these executive orders will be unquestionably serious and harmful. And I hold that before nullifying them, other important circumstances should be inquired into, as for instance, whether or not they have been ratified by Congress expressly or impliedly, whether their purposes have already been accomplished entirely or partially, and in the last instance, to what extent; acquiescence of litigants; de facto officers; acts and contracts of parties acting in good faith; etc. It is my opinion that each executive order must be viewed in the light of its peculiar circumstances, and, if necessary and possible, before nullifying it, precautionary measures should be taken to avoid harm to public interest and innocent parties.

To illustrate the foregoing proposition of individual consideration of specific cases. I shall go into a brief discussion of the executive orders involved in the cases now before this Court. With regard to the executive order No. 225 on general appropriation. I hold that the court should not declare it null and void till Congress may have an opportunity to provide a substitute measure for the sustenance of government. This view is predicated upon the principle of absolute necessity. Till Congress may pass a valid appropriation act our government cannot survive without the executive order in question. It would be absurd for this court to declare the cessation of an emergency, and by that same declaration permit, if not abet, the formation of another emergency which would be inevitable if, by reason of lack of appropriation, government shall cease to function. In such cases, when apparently the provisions of our laws and Constitution seem inadequate, the courts must go deeper even than the very Magna Carta itself and find solution in the basic principles of preservation of government and of national survival, which, in the last analysis, are the very reasons for the existence of a Constitution. In such extreme cases, as can come from the present situation, it would be the height of judicial imprevision to preserve the form of the constitution, and at the same time permit the disruption and cessation of the government which that same constitution so intricately designed and firmly established. Thus, in the remedy of an evil, we shall cause far greater one.

It may be argued that the course of action I am taking is founded upon fear, fear that Congress will again fail to act on the matter of appropriations, and it may be asserted that the members of Congress are presumed to be as patriotic as the members of this court, if not more, and that, therefore, we may rest assured that they will not fail to fulfill their duty. I admit this to be true, and accordingly, I ask, what is then the hurry and necessity for nullifying the executive order on appropriations which we are sure will soon be substituted by a valid appropriations act? Why not defer judgment and wait until the special session of Congress so that it may fulfill its duty as it clearly sees it? I can find no reason against this suggestion except, perhaps, a desire to assert judicial supremacy in a case where judicial statesmanship is more necessary.

It is also true that the possibility that Congress will again fail to provide funds for the operation of the government is a remote possibility. But there is no harm in providing for all possibilities, both near and remote. If that remote possibility never comes, well and good, nothing is lost and the situation is saved. However, if the remote possibility does come, and it is not impossible, and we had already nullified the executive order on appropriations, how will the government function and survive? On the other hand, if we defer judgment upon the nullity of such executive order, and that remote possibility does come, we still have the saving lifeline of that executive order which may, perhaps, be tolerated to save the country from chaos, until a more proper and adequate remedy can be secured.

With regard to the executive order appropriating funds for the conduct of the coming elections, I uphold the same view as in the foregoing, namely, not in abdicating the power of this court to pass upon the validity of an executive order, but to defer judgment upon such an order until the legislature may provide a substitute measure. The reason for this is, likewise, absolute necessity. Without such Executive Order we may not have elections in November, Elections are the very essence of popular government for the establishment and preservation of which, our Constitution has been consecrated. To permit the unwarranted abolition or even suspension of elections, will

surely result either in the denial of popular representation or in the perpetuation in power of those already in office. Either result is revolting to our system of government. Briefly stated, I hold that this court should neither ratify nor nullify this executive order, but should defer judgment in the same manner and for the same reasons stated above in connection with the executive order on appropriations. The Court, in these cases, is confronted not only with bare issues of law, but with actual anomalous situations pregnant with possible dangers to the nation, and it is the duty of the Court, as a dispenser of justice, to find a solution that is both legal and realistic.

With reference to Executive Order No. 62, which regulates rentals for houses, and Executive Order No. 192, which aims to control exports from the Philippines, I agree that they must be held null and void upon the reasons stated by Mr. Justice Tuason and Mr. Justice Feria and also upon those stated by Mr. Justice Montemayor, and Mr. Justice Alex Reyes.

My vote, therefore, is that the petitions must be granted in *Araneta v. Dinglasan*, G.R. No. L-2044; *Araneta v. Angeles*, G.R. No. L-2756 and *Guerrero v. Commissioner of Customs*, G.R. No. L-3055, and that judgment must be deferred in *Rodriguez v. El Tesorero de Filipinas*, G.R. No. L-3054 and *Barredo v. The Commission on Elections*, G.R. No. L-3056.

CONCURRING

PARAS, J.:

I concur in the opinion of Mr. Justice Tuason. I wish to add, however, the following observations: Even assuming, for the sake of argument, that the legislative intent is to make Commonwealth Act. No. 671 effective during the existence of the emergency contemplated there in and that it is within the exclusive province of the political departments to determine whether said emergency continues or has ceased to exist, I am of the conviction that, in view of the formal and unmistakable declarations of both the Congress and the President, said Act No. 671 should be held as having lost its force and effect.

It is important to remember that the kind of emergency expressly spoken of in the Act is a total emergency resulting from war and that the Act was passed at a time (December 16, 1941) when there was factually a state of war involving the Philippines.

In section 1 of Republic Act No. 342, approved on July 26, 1948, it was categorically declared by the Congress that "since liberation conditions have gradually returned to normal, but not so with regard to those who have suffered the ravages of war and who have not received any relief for the loss and destruction resulting therefrom," and that "the emergency created by the last war as regards these war sufferers being still existent, it is the declared policy of the state that as to them the debt moratorium should be continued in force in a modified form." The President, in turn, in his speech delivered on July 4, 1949, plainly proclaimed that "what emergencies it (the Republic) faces today are incidental passing pains artificially created by seasonal partisanship, very common among but will disappear with the rains that follow the thunderclaps not later than Nov. 8 of this year."

We thus have a formal declaration on the part of the Congress that the emergency created by the last war exists as regards only those debtors whose war damage claims have not been settled by the United States Philippine War Damage Commission (Sec. 2, Republic Act No. 342), patently meaning that said emergency is, at most, a partial emergency. It is needless to point out that only a small portion of the Philippine population are debtors and not all of those who are debtors are war damage claimants.

We also have the solemn declaration on the part of the President that the emergencies faced by the Republic are

incidental emergencies artificially created by seasonal partisanship, clearly meaning that such emergencies not only are not total but are not the result of war.

If the emergency is, as admitted by the Congress not total and, as admitted by the President, not the result of the war, Commonwealth Act No. 671 has lost its basis and cannot legally give rise to the Executive Orders herein involved. Indeed, it is not pretended that said Orders are intended to meet any emergency growing out of the last war. Lack of a budget, an appropriation for the elections, or an import control law has been brought about by the inaction of the Congress unaffected by the last war, and such emergency, if it may be called so, is not of the kind contemplated in Commonwealth Act No. 671.

The government has four years since liberation been normally functioning, elections had been regularly held; a national census had been taken; Congress had held regular and special sessions; people travel freely most everywhere and more quickly, by land, sea and air, to an extent that was not hitherto enjoyed, and "business is more brisk than ever, goods are plentiful, our people even in the remotest communities and barrios of the country are better dressed, their diet has been immensely improved, and they look more healthy than they ever did" (President's fifth monthly radio chat, March 15, 1949); and the sporadic depredations of the outlaws in isolated areas of the country are about the last paroxysms of a dying movement (President's State of the Nation Message, January 24, 1949), all these certainly negate the existence of any real (much less total) emergency.

That the Congress had heretofore recognized the cessation of the emergency is conclusively established by the fact that it had assumed the task of directly enacting, during its past sessions, measure dealing with all the matters covered by the specific legislative powers conceded to the President in Commonwealth Act No. 671. This is in line with the fundamental reason for the approval of said Act, as may be gathered from the following statement of President Quezon: "When it became evident that we were completely helpless against air attack and that it was most unlikely the Philippines Legislature would hold its next regular session which was to open on January 1, 1942, the National Assembly passed into history approving a resolution which reaffirmed the abiding faith of the Filipino people in, and their loyalty to, the United States. The Assembly also enacted a law granting the President of the Philippines all the powers that under the Philippine Constitution may be delegated to him in time of war." (The Good Fight, pp. 204-205.) When President Quezon said "in time of war", he undoubtedly meant factual war, a situation that existed at the time of the passage of Commonwealth Act No. 671.

Indeed, the dissenters admit that any delegated power directly exercised by the principal is considered withdrawn from the agent. A cursory examination of Commonwealth Act No. 671 will show that the legislative functions therein specified had been discharged by the Congress. The following illustrates the powers delegated in the Act and the measures enacted by the Congress itself covering each:

Sec. 2 of Commonwealth Act 671—

(a) to transfer the seat of the Government or any of its subdivisions, branches, departments, offices, agencies or instrumentalities:

Republic Act No. 333—

"An Act to establish the Capital of the Philippines and the permanent seat of the National Government, to create a capital city planning commission, to appropriate funds for the acquisition of private estates within the boundary limits of said city, and to authorize the issuance of bonds of the national government for the acquisition of private estates, for the subdivision thereof, and for the construction of streets, bridges, waterworks, sewerage and other municipal improvements in the capital City." (Approved, July 17, 1948.)

(b) to reorganize the Government of the Commonwealth including the determination of the order of precedence of

the heads of the Executive Departments:

Republic Act No. 51—

"An Act authorizing the President of the Philippines to reorganize within one year the different Executive departments, bureaus, offices, agencies and other instrumentalities of the government, including the corporations owned or controlled by it." (Approved, October 4, 1946)

(c) to create new subdivisions, branches, departments, offices, agencies or instrumentalities of government and to abolish any of those already existing:

Commonwealth Act No. 732—

"An Act to create the Department of Foreign Affairs and to authorize the President of the Philippines to organize said department as well as the foreign service of the Republic of the Philippines." (Approved, July 3, 1946)

(d) to continue in force in laws and appropriations which would lapse or otherwise become inoperative, and to modify or suspend the operation or application of those of an administrative character:

Commonwealth Act No. 709—

"An act appropriating the sum of the five million pesos to enable the national housing commission to resume its functions." (Approved, November 1, 1945)

Commonwealth Act No. 710—

"An act to appropriate funds to continue the payment of Retirement gratuities or pensions under existing laws." (Approved, November 1, 1945.)

(e) to impose new taxes or to increase, reduce, suspend, or abolish those existence:

Republic Act No. 215—

"An Act to amend Section One of the Republic Act numbered eighty-one providing a new time limit for the waiver of, and/or extension of the period within which to perform, accomplish or comply with, any term, condition, or stipulation required of locators, holders, lessees, operators of mining claims or concessions, and of water rights and timber concessions connected with the mining industry, and the condonation of mining, specific and real estate taxes, under certain terms and conditions." (Approved, June 1, 1948)

Ley No. 231 de la Republica—

"Ley que eleva los derechos de transferencia de Ganado mayor, enmendando al efecto el articulo quinientos veintiocho delCodigo Administrativo Revisado." (Aprobada, Junio 9, 1948.)

(f) to raise funds through the issuance of bonds or otherwise, and to authorize the expenditure of the proceeds thereof:

Republic Act No. 265—

"An Act establishing the Central Bank of the Philippines x x x." Sec. 87 (c) No. (7). (Approved, June 15, 1948.)

Republic Act No. 266—

"An Act appropriating such sums as may from time to time be released by the Central Bank representing excess monetary reserves, and authorizing the President of the Philippines to issue bonds, certificates or other evidences of indebtedness covering such amounts."

Republic Act No. 85—

"An Act creating the rehabilitation Finance Corporation." (Sec. 2 (f). Approved, Oct. 29, 1946.)

(g) to authorize the National, provincial, city or municipal governments to incur in overdrafts of purposes that he may approve:

Various Appropriation Acts:

(h) to declare the suspension of the collection of credits or the payment of debts:

Republic Act No. 342, approved, July 26, 1948.

(i) To exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce its authority.

The powers included in this subdivision (i) are of course covered by hundreds of other acts approved by the Congress which, it cannot be denied, all tend to "enable the Government to fulfill its responsibilities and to maintain and enforce its authority." Moreover, the withdrawal of the greater more important powers may be presumed to have carried the accessory and less important powers.

There is no merit in the contention that the Commonwealth Act No. 671 was enacted by virtue of the war powers of the Congress. As the Act itself expressly states, its basis is section 26 of Article VI of the Constitution which merely authorizes delegation of legislative powers to the President in times of war or other national emergency. The phrase "in times of war or other national emergency" is solely indicative or descriptive of the occasion during which the delegation may be extended, and does not classify the act of delegating legislative functions as a war power. It must be borne in mind that said section 26 is peculiar to our Constitution, with the result that the decisions of the Supreme Court of the United States cited on behalf of the respondents, expounding the theory that the exercise by the President of his war powers granted by the Congress cannot be interfered with by the courts, are not controlling. Particularly, the case of *Ludecke v. Watkins*, 92 L. ed. 1883, in which the opinion of the United States Supreme Court was written by Mr. Justice Frankfurter, cannot apply, for the further reason that it merely involved the power of deportation which, even in our jurisdiction, is recognized, it being the rule here that the courts cannot control the right of the Chief Executive to determine the existence or sufficiency of the facts justifying an order of deportation. Upon the other hand, the war power of the President is separately covered by section 10, paragraph (2), of Article VII, and that of the Congress by section 25, Article VI, of the Constitution, which are not invoked for the passage of Commonwealth Act No. 671.

CONCURRING AND DISSENTING

MONTEMAYOR, J.:

The majority opinion holds that Executive Order No.62 dated June 21, 1947; Executive Order No. 192 dated December 24, 1948; and Executive Orders Nos. 225 and 226 both dated June 15, 1949 were issued without authority, of law and therefore illegal and of no legal force and effect. I concur only in the result. Ordinarily, such concurrence without comment or explanation would be sufficient and satisfactory. However, in view of the radical between the reasons had and given by the majority in arriving at the result and those entertained by me, and considering the transcendental importance of these cases, not only because of the vast amounts of public funds and the rights of citizens affected but also of the principles of law involved, and the fact that not only the force and effect of a law (Com. Act No. 671) but also the legality and the force and effect of numerous executive

orders issued by several Presidents during a period of about three years, affecting as they do not only citizens, their interests and their properties but also the different departments and offices of the Government, I deem it my duty to set forth my views and the reasons in support of the same.

There is a claim made about lack of personality of some of the parties-petitioners particularly, the petitioners in G. R. Nos. L-3054 and L-3056, much could be said for and against that claim but I am willing to brush aside all the defenses and technicalities on this point in order to be able to consider and decide the more important question of the legality of the executive orders involved and whether or not Commonwealth Act No. 671 is still in force.

The aforementioned executive orders were issued on the strength of and by virtue of Commonwealth Act No. 671. The majority holds that Com. Act No. 671 ceased to have any force and effect on May 25, 1946 when Congress first convened in regular session after liberation. In this, I disagree for I believe and hold that Com. Act No. 671 is still in force and in effect. But despite this view, I am of the opinion that the executive orders under consideration were issued without authority.

Starting with Executive Order No. 62, we find that it deals with and regulates house and lot rentals. If the legislature had not already acted and legislated on this matter since the promulgation of Com Act No. 671, this would be a proper field for Presidential action. However, the legislature had already promulgated Commonwealth Act No. 689 and Republic Act No. 66, regulating house rentals and, as late as the month of May, 1947, Congress passed House Bill No. 973 further amending Commonwealth Act No. 689. In other words, in thus acting, the Legislature had already shown its readiness and ability to legislate on this matter, and had withdrawn it from the realm of presidential legislation or regulation under the powers delegated by Com. Act No. 671, not only this, but in issuing rules and regulations in the form of executive orders under his delegated powers, the Chief Executive merely acts as an agent of the legislature, his principal which made the delegation. As such agent, he cannot go against the policy and expressed desire of his principal.

There are radical differences between Commonwealth Act No. 689, Republic Act No. 66, and House Bill No. 978 on one side and Executive Order No. 62 on the other. That was the reason why President Roxas vetoed House Bill No. 978, believing in good faith that it would not solve and remedy the problem of house rentals as explained by him in his communication to the House of Representatives of June 21, 1947, setting forth his views on the bill. The President may not and could not substitute his opinion however excellent or superior for that of the legislature on matters of legislation when Congress has already acted and expressed its opinion and desire on the matter.

With respect to Executive Order No. 192, it will be remembered that Congress passed Com. Act No. 728, approved on July 2, 1946 authorizing the President to regulate, curtail, control, and prohibit the exportation of certain products, merchandise and materials. Under said authority the President issued Executive Order No. 3 dated July 10, 1946, later amending Section 2 of said executive order by Issuing Executive Order No. 23 dated November 1, 1946, regulating the exportation of certain products, materials and merchandise. The important thing to consider is that section 1 of Commonwealth Act No. 728 provided that the authority it granted to the President shall terminate on December 31, 1948, that is to say, that after said date the Executive could no longer validly regulate exports under said law. The President however, overlooked or ignored said injunction and invoking his emergency powers under Commonwealth Act No. 671, promulgated Executive Order No. 192 regulating exports, to take effect on January 1, 1949. What was said with regard to Executive Order No. 62 is applicable to the lack of authority of the Executive to promulgate Executive Order No. 192, namely, that on this matter of export control, the legislature had already withdrawn it from the jurisdiction of the Executive under his emergency powers after the enactment of Commonwealth Act No. 728, any Presidential power or authority on the subject of export control was derived from said Act. Not only this, but when in Section 4 of Com. Act No. 728 the legislature terminated the authority given President to regulate and control exports on December 31, 1948 and

failed or refused to renew said authority, the inference or conclusion is that after said date Congress deemed any presidential regulation on exports unnecessary and inadvisable. Therefore, in promulgating Executive Order No. 192 the Chief Executive acted not only without legislative authority but also against the wishes and policy of Congress. This he may not validly do.

With respect to Executive Orders Nos. 225 and 226, the considerations made with regard to Executive Order Nos. 62 and 192 are equally applicable. By previously enacting necessary legislation on the yearly Government appropriation and on the appropriation of funds for the expenses incurred in national elections, Congress has shown its readiness and ability to cope with the financial problems of the Government on this point. Republic Act No. 80, approved October 22, 1946, appropriating funds for the operation of the National Government from July 1, 1946 to June 30, 1947; Republic Act No. 156 appropriating funds for the fiscal year 1947-48 and Republic Act No. 320, the appropriation law for the fiscal year 1948-49 show that Congress was in a position and able to provide for the yearly expenditures of the Government. And Republic Act No. 73 appropriating Php.1,000,000.00 to defray election expenses on March 11, 1947; Republic Act No. 147 appropriating Php.1,000,000.00 to defray expenses for the election of provincial, city and municipal officials and eight senators held on November 11, 1947, and Republic Act No. 235 appropriating Php.100,000.00 for the special elections held on March 23, 1948, to fill vacancies in Representative District No. 4 of Iloilo and No. 1 of Leyte, demonstrated the ability of the Congress to appropriate money for election purposes. By so doing Congress had tacitly and impliedly withdrawn this portion of the field where the President may under his emergency power legislate or promulgate rules and regulations.

In this connection, it may be stated that in my opinion, the theory underlying the delegation of emergency powers to the President under Com. Act No. 671 and similar laws is that legislature because of the emergency resulting from the war, would be unable to meet in order to legislate or although able to meet, because of the emergency, the ordinary process of legislation would be too slow and inadequate and could not cope with the emergency. So, as a remedy, the power and authority of legislation are vested temporarily in the hands of one man, the Chief Executive. But as regards Executive Orders Nos. 225 and 226, the legislature has demonstrated that not only it could meet but also that it could legislate on this point of appropriations by approving general appropriation laws for the different fiscal years since liberation as well as appropriations for the necessary funds for the different national and provincial elections. Consequently, there no longer was any necessity for Presidential, legislation in this regard. Moreover, and this is not unimportant, the failure of the legislature to pass an appropriation law for the fiscal year 1949-50 and a law appropriating funds for the elections in November, 1949 was not due to any emergency resulting from the war, contemplated by Commonwealth Act No. 671, but rather and possibly due to lack of time and because of the rather abrupt ending and adjournment of the last session of the Legislature last May.

As already stated, the majority holds that Act No. 671 ceased to have force and effect on May 25, 1946. The other view is that it is still in force. To me this is the main and the more important issue involved in these cases. In fact the argument of the parties centered on this point. The importance of this issue may readily be appreciated when it is realized that on its determination is based, not only the validity or nullity (according to the theory of the majority opinion), of the four Executive Orders now under consideration, but also of all the Executive Orders promulgated under authority of Commonwealth Act No. 671 after May 25, 1946, up to the present time. Its determination will also decide whether or not the President may still exercise his emergency powers in the future on matters and subjects not heretofore withdrawn by the Legislature. Because of my disagreement with the majority on this point, I deem it necessary to explain and elaborate on my reasons for my disagreement.

For purposes of reference and to facilitate the same, I am reproducing Commonwealth Act No. 671 in full as well

as Section 26, Art. VI of the Constitution on which said Act is based:

"AN ACT DECLARING A STATE OF TOTAL EMERGENCY AS A RESULT OF WAR INVOLVING THE PHILIPPINES AND AUTHORIZING THE PRESIDENT TO PROMULGATE RULES AND REGULATIONS TO MEET SUCH EMERGENCY.

"Be it enacted by the National Assembly of the Philippines:

"SECTION 1. The existence of war between the United States and other countries of Europe and Asia, which involves the Philippines, makes it necessary to invest the President with extraordinary powers in order to meet the resulting emergency.

"SEC. 2. Pursuant to the provisions of Article VI, section 26, of the Constitution, the President is hereby authorized, during the existence of the emergency, to promulgate such rules and regulations as he may deem necessary to carryout the national policy declared in section 1 hereof. Accordingly, he is, among, other things, empowered (a) to transfer the seat of the Government or any of its subdivisions, branches, departments, offices, agencies or instrumentalities; (b) to reorganize the Government of the Commonwealth including the determination of the order of precedence of the heads of the Executive Department; (c) to create new subdivisions, branches, departments, offices, agencies or instrumentalities of government and to abolish any of those already existing; (d) to continue in force laws and appropriations which would lapse or otherwise become inoperative, and to modify or suspend the operation or application of those of an administrative character; (e) to impose new taxes or to increase, reduce, suspend or abolish those in existence; (f) to raise funds through the Issuance of bonds or otherwise, and to authorize the expenditure of the proceeds thereof; (g) to authorize the national, provincial, city or municipal governments to incur in overdrafts for purposes that he may approve; (h) to declare the suspension of the collection of credits or the payment of debts; and (i) to exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce the authority.

"SEC. 3. The President of the Philippines shall as soon as practicable upon the convening of the Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted.

"SEC. 4. This Act shall take effect upon its approval and the rules and regulations promulgated hereunder shall be in force and effect until the Congress of the Philippines shall otherwise provide."

"In time of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy," Sec. 26. Art. VI. Constitution.

I fully agree with the majority when it its opinion it says:

"Commonwealth Act No. 671 does not in term fix the duration of its effectiveness. The intention of the Act has to be sought for in its nature, the object to be accomplished, the purpose to be sub served, and its relation to the Constitution," p.5 majority opinion.

The main thesis of the majority is that the only reason for the delegation of legislative powers to the Chief Executive under the Constitution, such as was done under Com. Act No. 671 was because due to the emergency resulting from the war, the Legislature could not meet to enact legislation; that the moment the legislature could convene there would ho longer be any reason for the exercise by the President of emergency powers delegated to him; that if, when the legislature could meet and actually is In session, the President is allowed to exercise his delegated legislative powers, there would be the serious anomaly of two legislative bodies acting at the same me, namely, the legislature and the Executive, "mutually nullifying each other's actions"; that the limited period fixed in Com. Act No. 671 for its life and effectiveness as required by the Constitution is the interval from the passage

of said Act and the moment that Congress could convene, not in special session where its power of legislation is limited by the Chief Executive in his call for special session, but in regular session where it could be free to enact general legislation and that unless this automatic ending or cessation of Act No. 671 is so held, there would be need of another Act or legislation by Congress to repeal Act No. 671 in which case, the Chief Executive may by his veto power effectively block any effort in this direction.

I beg to differ with the foregoing thesis. I believe that, as I already had occasion to state to incidentally, the real reason for the delegation of legislative powers to the Chief Executive is not only because the legislature is unable to meet due to a national emergency but also because although it could and does actually meet, whether in regular or special session, it is not in a position and able to cope with the problems brought about by and arising from the emergency, problems which require urgent and immediate action. Certainly, one man can act more quickly and expeditiously than about one hundred members of the Legislature, especially when they are divided into legislative chambers. That is why in times of emergency, much as we in democratic countries dislike the system or idea of dictatorship, we hear of food, dictator, fuel dictator, transportation dictator, evacuation dictator etc., where the functions which ordinarily belong to a council or board or to a legislative body, are entrusted under certain limitations to one single official or individual.

Supposing that during a national emergency and while the legislature is in session, the legislators woke up one morning to find that there was extreme scarcity of imported foods, fuel, building materials, equipment required in agriculture and industry, etc, because of a monopoly, hoarding, injurious speculations, manipulations, private controls and profiteering or that there were wide-spread lockouts and strikes paralyzing transportation, commerce and industry, or rampant espionage or sabotage endangering the very life and security of the nation. How much time would it take the legislature to enact the necessary legislation in order to cope with the situation and pass the necessary emergency measures?

We are all familiar with the practice and routine of enacting laws, A bill is introduced in the Legislature; it is referred to the corresponding committee, it is studied by said committee, which in some cases holds public hearings; the committee discusses the bill and sometimes introduces amendments; if the bill is not killed in the committee or shelved, it is submitted to the chamber for study, discussion, and possible amendment by all the members; it is finally voted and if approved, it is sent to the other house where it undergoes the same process; and if it is finally approved by both houses of Congress, it is submitted to the Chief Executive for his study and approval or veto. All this may consume weeks or months as a result of which, ordinarily, many bills finally approved by Congress could be sent to the President for approval or veto only after adjournment of the legislative session. And we should not overlook the fact that in some cases for lack of time or due to disagreement among the legislators or between the two houses of Congress, important pieces of legislations like the annual appropriation law for the fiscal year 1949-50, appropriation of funds for the elections to be held in November, 1949, contained in Executive Orders Nos. 225 and 226, involved in the present cases, and the proposed amendment to the Election Code etc., have not been passed by Congress in its last session ending last May, 1949, which session lasted one hundred days. If we were to rely on the ordinary process of legislation to meet a national emergency, by the time the necessary and needed law is passed, the situation sought to be remedied, or the problem sought to be solved may have become disastrous or ended in calamity or gone beyond legislation or any remedy. It would be too late. It would be like locking the stable door after the horse had been stolen.

Now, for some retrospect. The Philippine National Assembly delegated its legislative powers because of the existence of a state of national emergency as early as the year 1939. During its second special session of that year, it promulgated the following laws:

- (a) Commonwealth Act No. 494, authorizing the President of the Philippines to suspend until the time of the

adjournment of the next regular session of the National Assembly, either wholly or partially and under such conditions as he may deem proper, the operation of Commonwealth Act No. 444, commonly known as the Eight Hour Labor Law;

(b) Commonwealth Act No. 496, authorizing the President to take over, for use or operation by the Government, any public service or enterprise and to pay just compensation in the manner to be determined by him and to prescribe and promulgate regulations he may deem essential to carry out the purposes of the Act;

(c) Commonwealth Act No. 498 declaring a state of national emergency due to a state of war among several nations and as a measure to prevent scarcity, monopolization, hoarding, injurious speculations, profiteering, etc. affecting the supply, distribution and movements of foods, clothing, fuel, building materials, agricultural equipments etc., authorized the President to purchase any of the articles or commodities available for storage, for re-sale or distribution, to fix the maximum selling price of said articles or commodities and to promulgate such rules and regulations as he may deem necessary; and;

(d) Commonwealth Act No. 500 authorizing the President in view of the existence of a state of national emergency to reduce the expenditures of the executive departments of the Government by the suspension or abandonment of service, activities, or operations of no immediate importance.

At that time, September, 1939 the second world war was only in Europe, quite far from the Philippines and had just begun. There was then no likelihood of the Philippines being involved in the war. In fact, the Philippines did not get involved in the war until more than two years later, in December, 1941. The National Assembly was then free to meet either in regular or special session to enact legislation to meet the emergency. In fact, it met in regular session in January, 1940 lasting 100 days and in January, 1941 for another regular session of 100 days, excluding the several special sessions held during those two years. And yet the Assembly delegated legislative powers to the President under Section 26, Art. VI of the Constitution. This is clear proof that, contrary to the theory of the majority opinion, the legislature delegated legislative powers to the President even when it could meet and it actually met several times.

After passing the Acts just mentioned delegating legislative powers to the President, the Assembly in its fourth special session on August 19, 1940 repeated and reiterated this practice and policy by passing Commonwealth Act No. 600 delegating additional and more extensive legislative powers to the President in spite of the fact that the war was still far away in Europe and there was no danger or prospect of involving the Philippines, and the legislature was still free to meet as in fact it met again in regular session in January, 1941. During its regular session begun that month and year, instead of stopping or ending the legislative powers delegated to the President, because according to the theory of the majority opinion, the legislature was able to meet, the Assembly allowed them to continue by passing Commonwealth Act No. 620 which merely amended Section 1 of Commonwealth Act No. 600. I repeat that all this, far from supporting the view of the majority that the legislature delegated legislative powers to the President only because it could not meet, fairly and squarely refutes said view.

Now, let us consider the theory of the majority that it would be a great anomaly to have two legislative bodies, the legislature and the President to be acting at the same time, each nullifying the acts of the other, I fail to see the suggested anomaly. In fact, under the view and interpretation given by the majority of the delegation of legislative powers, the very laws making such delegation contemplated the simultaneous functioning of the Legislature and the President, both exercising legislative powers. And it is a fact that there were several instances of the legislature and the President both validly and simultaneously exercising legislative powers.

Under section 2 of Commonwealth Act No. 496 already referred to, approved on September 30, 1939, the power delegated to the President, to prescribe rules and regulations he may deem essential to carry out the purposes of the Act, namely, the taking over of and operation by the Government of any public service or enterprise and to

pay for the same, waste last until the date of the adjournment of the next regular session of the National Assembly. This means that, during the regular session of the Assembly which began in January, 1940 and lasted 100 days, the President could exercise the emergency powers delegated to him. Again, under Commonwealth Act Nos. 600 and 620 the President could and indeed he exercised his emergency powers during the regular session of the Assembly which began in January, 1941, when President Quezon issued at least nine Executive Orders numbered 321, 333, 335, 337, 339, 340, 342, 344 and 345.

The same thing obtains under Com. Act 671, Since under the view of the majority the emergency powers of the President granted him by Commonwealth Act No. 671 ended only on May 25, 1946, then the extensive legislative powers delegated to the President under that Act could be exercised and in fact they were exercised during the five special sessions of Congress in the year 1945, which lasted a total of 84 days. During those special sessions of 1945, President Osmeña issued several Executive Orders in the exercise of his emergency powers.

Is there further proof needed to show that the suggested and feared anomaly and impropriety of the Legislature and the Executive both exercising legislative functions simultaneously, is more fancied than real? The situation was contemplated and expressly intended by the Legislature itself, evidently believing that said condition or state of affairs was neither anomalous nor improper. There is to my mind really no incompatibility. At such a time and the period of their simultaneous functioning, the Legislature may perform its ordinary legislative duties taking its time to study, consider, amend and pass bills, reserving to the President matters requiring and demanding immediate action.

After all, it is for the Legislature to say whether it wants the President to exercise his emergency powers at the same time that it is in session. It may validly and properly stipulate in its grant of emergency powers that they be exercised when the Legislature is not in session. In fact, in one instance, in Commonwealth Act No. 500, Sec. 2, the National Assembly expressly provided "that the authority herein given shall be exercised only when the National Assembly is not in session". When in its other acts of delegation, like Com. Act 671, the Legislature not only fails to stipulate this condition, but on the contrary, contemplates Presidential exercise of legislative powers simultaneously with the Legislature, it is to be presumed that the Legislature intended it and saw nothing improper or anomalous in it, and it is not for the Courts to pass upon the supposed impropriety or anomaly.

As to the possibility of the Chief Executive validly and successfully nullifying the acts of the legislature, to me that is quite remote, if not impossible. As already stated at the beginning of this opinion, the Chief Executive acting as an agent of the legislature under his emergency powers, may not go against the wishes and policies of his principal. He can only carry out its wishes and policies, and where his acts and orders run counter to those of the legislature, or operate on a field already withdrawn because the Legislature had already acted therein, his acts or Executive Orders must give way and will be declared void and of no effect, by the Courts, as we are doing with the Executive Orders involved in these cases.

With respect to the claim in the majority opinion that unless the emergency powers were made to end at the time the President made his report to Congress when it convened, it would be necessary to enact new legislation to repeal the act of delegation, in which case the period for the delegation would be unlimited, indefinite, and uncertain, contrary to the constitutional provision, I may say that the President was authorized by Act 671 to exercise emergency powers "during the existence of the emergency," and not a day longer. To me that is a limited period in contemplation of the Constitution. There would be no need for a new law to repeal the Act of delegation for said Act is self-liquidating. The moment the emergency ceases, the law itself automatically ceases to have force and effect, and the Presidential emergency powers also end with it.

Under my view, had the invasion of the Philippines by the Japanese forces, which we feared and expected in

December, 1941 failed to materialize either because the invasion was repelled or because the Japanese high command at the last moment decided to by-pass the Philippines and divert his forces further south to invade, say Australia, or if the Pacific war had ended as we all or most of us then expected it to end sooner within weeks or months after its commencement and that the emergency resulting there from had also ceased soon thereafter, Commonwealth Act No. 671 would have automatically ceased to have force and effect right in the year 1942 without any affirmative act or law of the legislature. There would be no point or reason for the President to continue exercising emergency powers when there no longer was any emergency. But under the view of the majority, emergency or no emergency, even if Congress could meet in special session to enact general legislation, the country must continue to be ruled by Presidential decree until the next regular session of Congress which may not come till many months later. In my opinion this is not logical. To me the real and only reason and test for the continuance of the exercise of emergency powers is the continued existence of the emergency, not the inability of Congress to meet in regular session.

The majority, and the parties who initiated these proceedings in court fear that the President may promulgate rules and regulations contrary in purpose and effect to legislation enacted by the Legislature; that he may reenact his rules and regulations after being repealed by the legislature, and that he may even veto a bill passed by Congress repealing the Act of delegation and ending his emergency powers. It is a fear not well founded. It runs counter to the presumption that the Chief Executive like any other public official would perform his functions and conduct himself in every respect for the good and welfare of the people and in accordance with the Constitution. It is a fear based on the presumption that the legislature and the Chief Executive are at loggerheads, working at cross purposes and that the President tho acting as a mere agent of his principal, the legislature, would brazenly repudiate his principal and. even challenge its authority, and that the Chief Executive is so much in love with his emergency powers that he would perpetuate them by going as far as vetoing an act of Congress ending said emergency powers. Let it be said to the credit of and in justice to the different Chief Executives who have wielded these emergency powers, Presidents Quezon, Osmeña, Roxas and the present incumbent President Quirino, that no accusing finger has ever been pointed at them, accusing or even insinuating that they had abused their emergency powers or exercised them for any purpose other than the welfare of the country, or that they had maliciously acted contrary to the wishes of the legislature. Even after liberation there has been no claim not even from the legislature itself, to the knowledge of this Court, at least to that of the undersigned, that any Chief Executive exercised his delegated powers, knowing that they had ended or had abused the same.

There is no charge or insinuation that any of the Executive Orders which we are now holding to be invalid were issued from ulterior motives or to further and favor the political interests of the President issuing them. It is admitted in the majority opinion that Executive Order No. 62 seeking to regulate house and lot rentals was issued in good faith by President Roxas. Executive Order No. 192 was issued to regulate exports, President Quirino presumably believing that exports at this time still needed regulation and control as was formerly provided by Congress in its Act No. 728, and that the matter was still within the field of his emergency powers as was also mistakenly believed by President Roxas in issuing Executive Order No. 52. As to Executive Order Nos. 226, it merely appropriated funds to defray the expenses in connection with the holding of the national elections in November, 1949, without which, said elections could not beheld. With respect to Executive Order No. 225, it merely continues in force Republic Act 320 which appropriated funds for the last fiscal year inasmuch as Congress had failed to pass a General Appropriation Act for the operation of the National Government for the period beginning July 1, 1949 to June 30, 1950, There is no insinuation that any political motives or purposes are involved in these Executive Orders.

I agree with the majority that since the Constitution provides that the delegation of legislative powers by the legislature should be done for a limited period, it is to be presumed that Commonwealth Act No. 671 was

approved with this limitation in view. I even agree to its definition of the word "limited". But I submit that Commonwealth Act No. 671 itself, limited its operation and effectiveness to and made it coextensive with the duration of the emergency resulting from the war and that furthermore, that duration is a limited period within the meaning and contemplation of the Constitution, Surely the emergency resulting from the war contemplated by the National Assembly when it enacted Act No. 671 is not permanent or indefinite. It is of limited duration. It may be long or it may be short; but it cannot be for always. It has an end. Presumably the members of the National Assembly thought that the emergency would not last as long as it did. The belief entertained at the time by not a few, in fact by a great portion of the people here not excluding the legislators, was that the war with Japan would be of short duration, a question of months at the longest; that American reinforcements would come at the beginning of the year 1942 and drive away the invading Japanese armies if they ever were able to occupy the Philippines and that, consequently, the war as far as these islands were concerned and the resulting emergency would soon pass away. The wisdom or lack of wisdom of the National Assembly in limiting or rather making the life and effectiveness of Commonwealth Act No. 671 coextensive with the resulting emergency, viewed in the light of what had actually happened, cannot be passed upon by this Court. So, as I see it, so long as the emergency resulting from the war continues, Com. Act No. 671 subsists and so long the Chief Executive retains his emergency powers.

The majority believes that as already stated, Act No. 671 was in force only until Congress could meet and resume its legislative functions. Naturally, this view is based on the theory that legislative functions in times of emergency are delegated only because of the inability of the legislative department to meet and exercise its functions, I believe I have successfully demonstrated the flaw in this theory, not only by showing that the real reason underlying the delegation of legislative powers is not the inability of the legislature to meet but rather its inability to consider and pass legislation in time to meet an emergency which requires as it does urgent and immediate action and can be solved only by the exercise of legislative functions by one single responsible individual, unhampered by study and prolonged discussion by many members of the legislative body, but also by the fact that although since 1939 when the second world war broke out in Europe and for a period of more than two years thereafter when the National Assembly could still meet and in fact convened on several occasions and for hundreds of days in regular and special sessions, nevertheless, it had been delegating legislative powers to the President.

The majority view finds no support in the law. Section 26, Art. VI of the Constitution does not impose this condition or requirement. The only important conditions imposed by the Constitution are that there be a national emergency and delegation be for a limited period. The same thing is true with Act No. 671 which makes the delegation. The only condition imposed by Sec. 2 of said Act is that the delegated powers be exercised during the emergency. Neither in the Constitution nor in Com. Act 671 is there any hint or insinuation, much less express mention about the inability of the Legislature to meet. When every consideration for clearness and for Executive and Judicial guidance loudly called for and demanded an unequivocal and clear expression of Constitutional and legislative intent, laws, the source and basis of the emergency powers are conspicuously silent on this point. The only conclusion is that neither the framers of the Constitution nor the members of the National Assembly had thought of much less intended to impose this condition. To sustain the majority view would require reading into the law what is not there.

In further support of its view that emergency powers may be exercised by the President only until the Legislature could meet, the majority finds comfort in and cites section 3 of Act 671 which reads as follows:

"SEC. 3. The President of the Philippines shall as soon as practicable upon the convening of the Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted."

I fail to see anything in said section that warrants a holding that upon filing his report with Congress, about the rules and regulations promulgated by him under his emergency powers under Com. Act 671, his emergency powers automatically ceased. I could well imagine that under an act of delegation of legislative powers where the President is authorized to perform one single act such as the suspension of the eight-hour labor law under Com. Act No. 494, or the reduction of the expenditures of the executive departments of the National Government by the suspension or abandonment of services, activities or operations of no immediate necessity under Commonwealth Act No. 500, when the President has exercised his delegated authority and made his report to the Assembly as required by said laws, the latter, as well as his delegated authority hereunder automatically ceased, for the simple reason that nothing remains to be performed or done. However, treating of the grant of extensive emergency powers as was done under Commonwealth Acts 600, 620 and 671 where said laws contemplated many different acts, rules and regulations of varied categories and objectives and to be performed not at one time or instance but at different times during the existence of the emergency, as the need or occasion arose, there is no reason for the belief or the holding that upon submitting a partial report of his acts up to the time he made the report, the whole law making the delegation including his powers under it automatically ended. The legislature during the emergency might be able to convene and naturally, the President will immediately make his report to it of the rules and regulations promulgated by him up to that time; but if the emergency continued or even became more serious, would it be reasonable to hold that his emergency powers ended right then and there? Would it not be more logical and reasonable to believe that inasmuch as the grant and the exercise of his emergency powers were motivated by and based upon the existence of the emergency and since the emergency continued his work and responsibility were not ended and that his partial report could not possibly affect the continuance of his emergency powers?

Section 3 of Commonwealth Act No. 671 provides for the filing of a report with Congress by the President as soon that body convened. According to the majority opinion on that date the whole Act No. 671 ceased to have force and effect. Under that theory, as soon as Congress convened in June, 1945, and it is to be presumed that President Osmeña, complying with his duty, must have made his report of all the numerous Executive Orders he had issued so far, perhaps including those issued by his predecessor President Quezon who because of his premature death was unable to report his acts to Congress, the President automatically lost his emergency powers. But the majority opinion qualifies this convening of Congress for it says that it must be regular session and not a special session, thereby extending the life of Com. Act No. 671 one year longer, to May, 1946 when Congress held its first regular session after liberation. I do not quite see the necessity or the reason for the distinction made between the special and regular sessions, for at both sessions Congress could well receive the report of the President. The reason given is that "in a special session Congress may consider general legislation or only such subjects as he (President) may designate." But as a matter of fact, the first two special sessions called by President Osmeña in 1945, after liberation, each for a period of thirty days were both to consider general legislation. So, actually there is no reason for the distinction.

Furthermore, if it were the intention of the Legislature to fix the time at which Commonwealth Act No. 671 would cease in its operation as of the date when the President could file his report before Congress when it first convened not in special session but in regular session, it would have expressly and unequivocally said so. In its other acts delegation of powers when the legislature wanted to have the report of the President at its regular session, it expressly and explicitly said so. In section 3 of Commonwealth Act 494, in section 5 of Com. Act 496, in section 6 of Com. Act 498, in section 3 of Com. Act 500, and in section 4 of Com. Act 600 the National Assembly provided that the President shall report to the National Assembly within ten days after the opening of the next regular session of the said Assembly of whatever acts have been taken by him under the authority of those Acts. The Assembly left nothing for interpretation or speculation. In section 3 of Com. Act 671, however,

the same Assembly has not specified the kind of session before which the President should make his report. It merely said that upon the convening of the Congress the President shall report thereto all the rules and regulations promulgated by him. We should make no distinction where the law makes or calls for none. Here again, to support the majority opinion would require reading into the law, sec. 3 of Act 671, something that is not there.

In case like the present where there is room for doubt as to whether or not Commonwealth Act No. 671 has ceased to operate, one view (of the majority) being that it automatically ceased to have any force and effect on May 25, 1946 the other view being that the law operated as long as the emergency resulting from the war existed, the opinion of and the obvious interpretation given by the legislature which enacted the law and made the delegation of powers and the President to whom the delegation was made and who exercised said powers, should have much if not decisive weight. We must bear in mind that we are not passing upon the validity or constitutionality of a law, enacted by the Legislature, in which case, the Court may find the act invalid and unconstitutional if it is in violation of the basic law, regardless of the opinion or interpretation given by the legislature that passed it or of the Executive Department which may be trying to enforce it. We assume that Act No. 671 is valid and constitutional. Here, we are merely trying to ascertain the intention of the National Assembly as to the life and period of effectiveness of Commonwealth Act No. 671.

Do the study and analysis of other acts of the legislature similar to Com. Act 671, favor the view of the majority? The answer in my opinion is clearly and decidedly in the negative. The majority cites Com. Acts Nos. 600 and 620 to support the theory that Com. Act 671 automatically ceased to operate when Congress met at its next regular session. But the logical inference or conclusion to be drawn from these two acts is, in my opinion just the reverse. It is even fatal to the view of the majority as I shall attempt to show. Let us consider Com. Act 600 delegating extensive legislative powers to the President, approved on August 19, 1940, which like Act 671 is silent as to any express provision regarding its life or period of effectiveness, and as to how long the emergency powers granted the President by it will last. Section 4 of said Com. Act No. 600 like section 3 of Act 671 provides that "the President shall within the first ten days from the date of the opening of the Assembly's next regular session report to said Assembly whatever action he had taken under the authority therein granted." Said section 4 of Act 600 is clearer and more specific than section 3 of Act 671 in that it clearly specifies the next regular session whereas the latter refers merely to the convening of Congress. But let us assume *arguendo* as contended by the majority that "the convening of the Congress" mentioned in Sec. 3 of Com. Act 671, referred to regular session. According to the majority opinion, under Section k of Com. Act No. 600, as soon as the President made the report to the Rational Assembly at its "next regular session" which was to be and was actually held in January, 1941, Com. Act 600 automatically ceased to operate and the President automatically lost his delegated legislative powers. But this is contrary to the very view of the National Assembly which passed said Act 600. Com. Act No. 620 of the National Assembly passed during that "next regular session" and approved on June 6, 1941 merely amended section 1 of Com. Act 600, which enumerated the powers delegated to the Chief Executive, if left the rest of the provisions and sections of Com. Act 600 intact. So that, under section 4 (which was left intact) of Act 600, the President was still required to report to the National Assembly within the first 10 days from the date of the opening of its next regular session which should have begun in January, 1942, despite the fact that he had already made a report to the Legislature in January, 1941. Incidentally, this answers and refutes the contention of the majority that the law of delegation of powers contemplated only one meeting of Congress at which the President was to report his acts of emergency, and that said report was to be the first and the last.

Now, what inference may be drawn from this amending of section 1 only of Com. Act 600 by Com. Act No. 620? The logical conclusion is that in promulgating Com. Act 620 on June 6, 1941, the National Assembly all along regarded Com. Act No. 600 which delegated legislative powers to the President as still in force and effect despite the report filed with the Assembly by the President at the beginning of its regular session in January, 1941. When

the legislature merely amends a section of a law, leaving the rest of said law intact and unchanged, the logical inference and conclusion is that the amended law was still In force because you cannot amend a law which is no longer in force. The only thing that could be done with a law that has ceased to operate is to re enact it. But in passing Commonwealth Act 620 in July, 1941, the Assembly did not re enact Com. Act No. 600. By merely amending one of its sections, the Assembly, as late as June 1941, considered said Act 600 as still effective and in operation and consequently, the emergency powers of the President continued and subsisted despite his previously having made a report of his actions in January 1941. This squarely refutes the theory that as soon as the President filed his report on the exercise of his emergency powers with the legislature, the Act making the delegation ceased to operate and the President lost his emergency powers.

As I have already stated in the course of this opinion, in connection with another phase of this case from January to June, 1941 President Quezon had issued at least eight Executive Orders in the exercise of his emergency powers, by authority of Com. Act 600. From this it is evident that he did not share the majority view, because despite his having made his report to the Assembly in January, 1941, and even before the enactment of Com. Act No. 620, he believed and considered Com. Act No. 600 as still in after that date and that he still retained his emergency powers.

Then, let us see what the attitude was and conduct of the Chief Executives and of Congress after May 25, 1946, when according to the majority opinion Com. Act No. 671 ceased to operate. After May 25, 1946, two Presidents, Roxas and Quirino had issued numerous Executive Orders based upon and invoking Com. Act No. 671. Like President Quezon, they also evidently were of the opinion that despite the meeting of the Legislature in regular session the act delegating legislative powers to them (in the case of Roxas and Quirino—Com. Act No. 671) was still in force, that they still retained their emergency powers and so proceeded to exercise them in good faith.

Congress also, evidently, believed that Com. Act No. 671 was still in force and effect after said date. May 25, 1946. In spite of the several legislative sessions, regular and special since then and up to and including the year 1949, Congress has not by law or resolution said anything questioning or doubting the validity of said Executive Orders on the score of having been promulgated after Com. Act No. 671 had supposedly ceased to operate. Not only this, but at least in one instance, Congress had by a law promulgated by it, considered one of those supposed illegal Executive Orders promulgated after May 25, 1946, to be valid, I refer to Republic Act No. 224 approved on June 5, 1948, creating the National Airport Corporation which considered and treated as valid Executive Order No. 100, dated October 21, 1947, by providing in section 7 of said Republic 224 for the abolishment of the Office of the Administrator of the Manila International Airport established under the provisions of said Executive Order No. 100 and the transfer of the personnel and funds created under the same Executive Order to the National Airport Corporation. This Executive Order No. 100 which appropriated public funds and therefore, was of a legislative nature must have been issued under Com. Act No. 671. It cannot possibly be regarded as having been promulgated by authority of Republic Act No. 51, for said Act approved on October 4, 1946 gave the President only one year within which to reorganize the different executive departments, offices, agencies, etc. and Executive Order No. 100 was promulgated on October 23, 1947 after the expiration of the one year period. Furthermore, it is a matter of common knowledge that during the last session of Congress which ended in May, 1949, there was talk if not a movement in the Congress to end the emergency powers of the President. Nothing concrete in the form of legislation or resolution was done for if we are to accept newspaper reports and comment, the members of Congress or at least a majority of them were willing and satisfied to have the Chief Executive continue in the exercise of his emergency powers until the end of 1949. All this leads to no other conclusion but that Congress believed all along that Commonwealth Act No. 671 is still in force and effect.

If Commonwealth Act No, 671 is still in force and effect the question arises: how long and for what period will

said Act continue to operate? As I have already stated, I believe that the delegation of emergency powers was made coextensive with the emergency resulting from the war, said as long as that emergency continues and unless the legislature provides otherwise, Act 671 will continue to operate and the President may continue exercising his emergency powers.

The last and logical question that one will naturally ask 1st has the emergency resulting from the war passed or does it still exist? This is a fair and decisive question inasmuch as the existence of the emergency is, in my opinion, the test and the only basis of the operation or cessation of Act 671. The existence or non-existence of the emergency resulting from the war is a question of fact. It is based on conditions obtaining among the people and in the country and perhaps even near and around it. It is a highly controversial question on which people may honestly differ. There are those who in all good faith believe and claim that conditions have returned to normal; that the people have now enough to eat, sometimes even more than they had before the war; that people nowadays especially in the cities are better nourished and clothed and transported and better compensated for their labor, and that the President himself in his speeches, chats and messages had assured the public that normal times have returned, that the problem of peace and order had been solved, that the finances of the Government and the national economy are sound, and that there is an adequate food supply. It is, therefore, claimed that there is no longer any emergency resulting from the war.

On the other hand, it is asserted with equal vehemence in the opposite camp that conditions are still far from normal; that the picture painted by the President in cheerful and reassuring colors is based on over optimism and, as to be expected, calculated to show in bold relief the achievements of the administration, and so should be considered with some allowance; that we are now importing more rice than before the war for the reason that many rice farms are idle because of the farmers' fear of or interference by dissidents; that the problem of peace and order is far from solved as shown by the frequent hold-ups, kidnappings, lootings and killings and organized banditry not only in Luzon but also in the Visayas and Mindanao; that whereas before the war, the Constabulary force consisting of only about 6,000 officers and men could provide complete protection to life and property and was adequate in all respects to enforce peace and order, now this Constabulary enlarged to about 20,000 men, provided with modern weapons and equipment and with the aid of thousands of civilian guards and of the Philippine Army and Air force cannot solve the peace and order problem; that the dissidents who are well organized, armed and disciplined even attack and sack towns and sometimes openly defy and engage the armed Government forces; that along as more than 100,000 firearms are loose and in the hands of irresponsible parties, not excluding the seemingly regular mysterious supply to them of additional firearms and ammunitions, there can be no peace and order; and as to the barrio folk in central Luzon and now, even in provinces bordering central Luzon whose parents and relatives had been killed by dissidents, whose women folk had been outraged by the same elements, whose homes had been looted and burned and whose very lives had been subjected to constant terror and peril, compelling them to leave their homes and their farms and evacuate to and be concentrated in the poblaciones to live there in utter discomfort and privation, it is that it would be difficult to convince these unfortunate people that normalcy has returned and that there is no longer any emergency resulting from the war. To further support the claim of the existence of an emergency, the menace of communism not only at home, particularly in central Luzon but from abroad, especially China, is invoked. And it is asserted that all this is a result of the war.

I repeat that this question of the existence of an emergency is a controversial one, the decision of which must be based on the ascertainment of facts, circumstances and conditions and the situation obtaining in the country. This Court is not in a position to decide that controversy. It does not have the facilities to obtain and acquire the necessary facts and data on which to base a valid and just decision. Neither did it have the opportunity to receive the necessary evidence as in a hearing or trial at which evidence, oral or documentary, is introduced. We cannot

invoke and resort to judicial notice because this refers to things of public knowledge, and not controverted, whereas things, facts and conditions necessary for the determination of whether or not there is still an emergency, are often not of public knowledge but require investigation, accurate reporting and close contact with the people to be able to ascertain their living conditions, their needs, their fears, etc.

To me, the departments of the Government equipped and in a position to decide this question of emergency are the Chief Executive and the Legislature. The first has at his command and beck and call all the executive officials departments. He has the Army, the Constabulary, Naval Patrol, the Police of the cities lieutenants to inform him of the and towns and the barrio state of peace and order and the security of the state. He has the Secretary of Education and all the subordinate officials under him to inform him as to whether or not there is a school crisis or emergency as a result of the war. He has the Secretary of Agriculture and Natural Resources and his men to advise him as to the agricultural needs and the food supply of the country. He has the Secretary of Finance and all the officials under him to inform him of the finances of the Government and the economy of the country as well as the officials to advise him of the land and shipping transportation situation. In other words, the President is in a position to determine whether or not there is still an emergency as a result of the war. As to Congress, it is equally in a position and in fact it is the first called upon to decide as to the existence or non-existence of an emergency. According to the Constitution Sec. 24, Art. VI, either House of Congress may call upon the head of any department of the Government on any matter pertaining to his department. The members of Congress come from all parts and the far-corners of the country. They are supposed to be in close contact with their constituents and know at first hand their needs, they way they live, etc. Congress therefore should know. Moreover, it is the legislature that must first determine as to whether or not there is a national emergency as a condition precedent, to the delegation of its legislative powers. Naturally, it is the one that is called upon to say when that emergency ceases.

Now, one will ask, what does Congress think about the emergency? Does it believe that it still exists? To me the answer is YES. What has been said about the acts, conduct and attitude of the legislature as to its belief that Com. Act No. 671 is still in force, are all applicable and may be repeated to show that the Congress believes that the emergency resulting from the war still exists. Under the theory that I maintain, Congress must be of the opinion that the emergency still exists for the reason that as I have shown Congress believes that Com. Act No. 671 is still in force and the life and operation of said Act depends upon and is coextensive with the existence of the emergency. To this may be added the attitude and the belief of the President as to the continued existence of the emergency. It must be borne in mind that Com. Act No. 671 authorizes the President to exercise his emergency powers only during the existence of the emergency. The inference is that before exercising his emergency powers by promulgating an Executive Order he must first determine and decide that the state of emergency still exists for that is the condition precedent to the exercise of his delegated power. In other words, the two departments of the Government, the Legislative and Executive Departments, best qualified and called upon to determine whether or not the emergency resulting from the war still exist have made manifest in their acts and attitude that they believe that such emergency still exists. I may here state that on this question of emergency, I entertain no personal opinion either way, lacking as I do the means of deciding fairly and justly. Neither has the Court. If the decisions of the courts on questions of fact involved in a controversy are given due respect and weight and are binding, it is because such decisions are based on evidence adduced and received after a hearing. No such hearing was held if or the purpose and no evidence has been received. In other words, we have nothing on which to decide a question of fact which is the existence or non-existence of emergency.

In view of the conclusion we have arrived at, finding these Executive Orders to be void and of no effect, particularly Executive Orders No. 225 and 226 with the evident result that no funds are appropriated for the operation of the Government for the fiscal year beginning July of this year and for the expenses in the coming

national elections next November, one may inquire as to what will happen or what is to be done. The answer or answers to this question lie with the Chief Executive; Congress will not meet in regular session until next year. It is not for the court, not even the undersigned to suggest, the calling of a special legislative session to cope with the perilous situation thus created, although one may regard that as a logical remedy. But, should the President call a special session and Congress for one reason or another fails to meet, or tho it meets, for one reason or another it fails to pass an appropriation law, then a real crisis will have ensued, I am confident that the Chief Executive, conscious of his responsibility as the Chief of the nation would not just stand supine and idle and see the Government of the Republic of the Philippines disintegrate and die. He would know what to do and he would do something according to his sound discretion and in accordance with law, statutory or otherwise and in the discharge of his high executive powers, express or implied.

TORRES, J.:

I concur in the foregoing opinion of Mr. Justice Montemayor on the existence of the emergency powers. I reserve my opinion on the validity of Executive Orders Nos. 225 and 226.

CONCURRING AND DISSENTING

REYES, J.:

The main issue in these cases is whether the emergency which on December 16, 1941 prompted the approval of Commonwealth Act No. 671, delegating extraordinary powers to the President, still existed at the time the Chief Executive exercised those powers by promulgating the executive orders whose validity is now challenged.

On issues similar to the one just formulated there is a diversity of opinions. While some, courts would rather leave the determination of such issues to the political department of the Government; others are for making the determination subject to judicial review. But the latest ruling of the United States Supreme Court on the point accords with the first view and declares that "these cal judgment for which judges are matters of political judgment for which the judges have neither technical competence nor official responsibility." (Ludecke. Watkins, 92 L. ed. 1883.)

In any event, the existence or non-existence of an emergency is a question of fact which may not always be determined without evidence by mere reference to facts within judicial notice. In the present cases, there has been no trial for the reception of proof, and I am not aware that enough facts have been shown to justify the conclusion that the emergency in question has already ceased. On the other hand, since the exercise of the emergency powers by the President presupposes a determination of the existence of the emergency, the President must be presumed to have satisfied himself in some appropriate manner that the emergency existed when he issued his executive orders. Under the theory of separation in accord with the latest ruling of the United States Supreme Court, it is not for the judiciary to review the finding of the Executive in this regard. Judicial review would in such case amount to control of executive discretion and place the judicial branch above a co-equal department of the Government. Only in case of a manifest abuse of the exercise of powers by a political branch of the Government is judicial interference allowable in order to maintain the supremacy of the Constitution. But with the cold war still going on though the shooting war has already ended; with the world still in turmoil so much so that the American Secretary of State has declared that "the world has never before in peace time been as troubled or hazardous as it is right now;" with most of the industries of the country still unrehabilitated, so that a large proportion of our food and other necessities have to be imported; with a great portion of the population still living in temporary quarters; with most of the war damage claims still unpaid; and with peace and order conditions in the country far from

normal, it would be presumptuous for this Court, without proof of the actual conditions obtaining in all parts of the Archipelago, to declare that the President clearly abused his discretion when he considered the emergency not ended at the time he promulgated the executive orders now questioned.

The majority opinion has skirted the issue of whether or not the question of the existence or continuance of the emergency is one for the political department of the Government to determine by restricting "the life of the emergency powers of the President to the time the Legislature was prevented from holding session due to enemy action or other causes brought on by the war." I cannot subscribe to this narrow interpretation of Commonwealth Act No. 671, for in my opinion it is contrary to both the plain language and manifest purpose of that enactment. That law invests the President with extraordinary powers in order to meet the emergency resulting from the war and it expressly says that the President is to exercise those powers "during the existence of the emergency." The law does not say that the President may exercise the powers only when the Legislature is not in session. Much less does it say that the emergency powers shall cease as soon as the Legislature has convened in regular session. An emergency resulting from a global war cannot end with the mere meeting of the Legislature. Neither may it be legislated out of existence. The Legislature, once it has convened, may, if it so desire, revoke the emergency powers of the President but it cannot by any form of legislative action put an immediate end to the emergency itself. Well known is the fact that a deliberative body, such as the Legislature, because of the time consumed in the study and discussion of a measure, may not always act with the promptness which the situation requires so that in an emergency there is really need for the concentration of power in one man. This may well be the reason why Act No. 671 in express terms authorizes the President to exercise the emergency powers "during the existence of the emergency" and not merely during the time that the Legislature could not be in session. For one thing, to make the life of the emergency powers depend upon the inability of the Legislature to meet is the same as to declare those emergency powers automatically ended the moment they were conferred, for at that very moment the Legislature that conferred them was in session.

The argument that, unless the emergency powers of the President were made to cease the moment Congress convened in regular session, we would be having two legislatures which could mutually annul each other will not stand analysis. In supposing that the President, in the exercise of the emergency powers could repeal or modify a bill passed by the Legislature, the argument overlooks the fact that the emergency powers delegated to the President under Art. VI, Section 26 of the Constitution could only authorize him to promulgate rules and regulations to carry out a declared national policy. Only the Legislature (with the concurrence of the President of course) may declare a national policy, and once that policy is declared the President may not, under the Constitution, depart from it. Moreover, unless the Presidential veto could be overridden, no bill approved by Congress could become a law if the President did not want it. And if the President approves a bill and allows it to become a law, surely he can have no reason for repealing it; while, on the other hand, if the bill becomes a law because his veto has been overridden, there is no point in his repealing that bill, because if there are enough votes to override his veto there must also be enough votes to repeal his emergency powers.

The majority opinion has I think placed a rather forced construction upon Section 3 of Commonwealth Act No. 671, which provides that—

"The President of the Philippines shall as soon as practicable upon the convening of the Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted."

As may be seen, the above provision does not say that the President has to report only once, that is, the first time Congress is convened, and never again. But the majority opinion wants to read that thought into the law in order to bolster up the theory that the emergency powers of the President would end as soon as Congress could convene in a regular session.

Invoking the rule of contemporary construction, the majority opinion makes reference to a passage in President Quezon's book, "The Good Fight," to the effect that, according to the author, Act No. 671 was only "for a certain period" and "would become invalid unless re-enacted." But I see nothing in the quoted phrases any suggestion that the emergency powers of the President were to end the moment Congress was convened in regular session regardless of the continuance of the emergency which gave birth to those powers. A more valid application of the rule of contemporary construction may, I think, be made by citing the executive orders promulgated by President Roxas in his time in the exercise of the emergency powers conferred by Commonwealth Act No. 671. Many of those executive orders were issued after May 25, 1946 when Congress convened in regular session, an event which, according to the majority opinion, automatically put an end to the emergency powers.

While we have adopted the republican form of government with its three co-equal departments, each acting within its separate sphere, it would be well to remember that we have not accepted the American theory of separation of powers to its full extent. For, profiting from the experience of America when her Supreme Court, by the application of the doctrine of separation of powers, frustrated many a New Deal measure which her Congress had approved to meet a national crisis, our Constitutional Convention in 1935, despite the warning of those who feared a dictatorship in this country, decided to depart from the strict theory of separation of powers by embodying a provision in our Constitution, authorizing the delegation of legislative powers to the President in times of war or other national emergency. It is my surmise that this provision was intended to not only against the inability of Congress to meet but also against its usual tardiness and inaction. We have proof of this last in the last regular session of Congress, when this body failed to pass measures of pressing necessity, especially the annual appropriation law and the appropriation for expenses of the coming elections.

It is said that the need for an appropriation law for the fiscal year 1949-1950 as well as for the coming elections is not an emergency resulting from the war. But I say that if the emergency resulting from the war as contemplated in Commonwealth Act No. 671 still exists, as the President believes it exists or he would not have issued the executive orders in question (and it is not for this Court to change that belief in the absence of proof that the President was clearly wrong) would it not be a dereliction of duty on his part to fail to provide, during the emergency, for the continuance of the functions of government, which is only possible with an appropriation law? What would be gained by issuing rules and regulations to meet the emergency if there is no Government to enforce and carry them out. The mere calling of a special session is no guaranty that an appropriation law will be passed or that one will be passed before the thousands of officials and employees, who work for the Government, have starved. It is, probably, because of these considerations that the National Assembly, in approving Commonwealth Act No. 671, specifically empowered the President, during the existence of the emergency, "to continue in force laws and appropriations which would lapse or otherwise become inoperative." And that Act has also authorized the President during the existence of the same emergency "to exercise such other powers as he may deem necessary to enable the government to fulfill its responsibilities and to maintain in force this authority." Under this specific provision, the appropriation for the expenses of the coming elections would, naturally, come, for, without doubt, it is a measure to enable the Government "to fulfill its responsibilities."

Consistently with the views above expressed, I am of the opinion that Executive Order No. 225, appropriating funds for the operation of the Government of the Republic for the fiscal year 1949-1950, and Executive Order No. 226, appropriating funds for the expenses of the coming national elections in November, 1949, are valid so that the petition in G. R. No. L-3054, Eulogio Rodriguez, Sr., etc. v. The Treasurer of the Philippines, and the petition in G. R. No. L-3056, Antonio Barredo, etc. v. The Commissioner on Elections, et al., in which the said two executive orders are respectively challenged, should be denied.

But Executive Order No. 62 (regulating rents) and Executive Order No. 192 (controlling exports) stand on a

different footing. The validity of Executive Order No. 62 can no longer be maintained because of the approval by the Legislature of Commonwealth Act No. 689 and Republic Act No. 66, which regulate the same subject-matter and which, as an expression of the national policy, can not be deviated from by the President in the exercise of the emergency powers delegated to him by Commonwealth Act No. 671. The is true with respect to Executive Order No. 192 (controlling exports) in view of the passage of Commonwealth Act No. 728, regulating the same subject-matter, especially because section 4 of said Act terminates the power of the President there under on December 31, 1948, if not sooner. Consequently, since the validity of these executive orders (Nos. 62 and 192) can no longer be upheld, the petitions in G. R. Nos. L-2044, L-2756 and L-3055, which seek to prohibit their enforcement, should be granted.

PADILLA, J.:

I join in this opinion of Mr. Justice Reyes. I wish to add that I agree with Mr. Justice Bengzon that petitioners in G. R. Nos. L-3054 and L-3056 have no personality to institute the proceedings.

DISSENTING

BENGZON, J.:

The majority feels it has to decide the question whether the President still has emergency powers; but unable to determine in which of the above five cases the issue may properly be decided, it grouped them together. When the eye or the hand is unsure, it is best to shoot at five birds in a group: firing at one after another may mean as many misses.

It does not matter that the first two cases had been submitted and voted before the submission of the last three. Neither does it matter that, of these last, two should be thrown out in accordance with our previous rulings. The target must be large.

These cases could be, and should be, decided separately. If they are, they may be disposed of without ruling on the general question whether the President still has emergency powers under Commonwealth Act No. 761. How? This way, which is my vote.

- L-2044, *Araneta v. Dinglasan*; L-2756, *Araneta v. Angeles*. The President has presently no power to regulate rents, because his power to do so is granted by Commonwealth Act Nos. 600 and 620 which have lapsed. Under Commonwealth Act 671 he has no power to regulate rents.

- L-3056, *Barredo v. Commission, etc.* Dismissed because petitioner has no personality to sue. According to *Custodio v. President of the Senate, et al.*, 42 Off. Gaz., 1243, a citizen and taxpayer, as such, has no legal standing to institute proceedings for the annulment of a statute.

- L-3054, *Rodriguez v. Treasurer*. Dismissed, like the *Barredo* case. The private rights of petitioner and of his party men are affected only as taxpayers.

- L-3055, *Guerrero v. Commissioner of Customs*. Supposing that the President still has emergency powers under Commonwealth Act 671, and that they include regulation of exportation, inasmuch as the Congress has chosen to legislate on exports (Commonwealth Act No. 728), it has thereby pro tanto withdrawn the power delegated to the President along that field.

It is a sound rule, I believe, for, the Court to determine only those questions which are necessary to decide a case.

Although I am favorably impressed by the considerations set forth by Mr. Justice Montemayor and Mr. Justice Reyes on the existence of emergency powers, prefer to vote as here indicated.

I reserve the right subsequently to elaborate on the above propositions.

For lack of the required number of votes, judgment was not obtained. However, after rehearing, the required number of votes was had, by resolution of September 16, 1949, which follows.

RESOLUTION

MORAN, C. J.:

Petitioners filed motions asking (1) that Mr. Justice Padilla be disqualified to act in these cases; (2) that the vote cast by the late Mr. Justice Perfecto before his death be counted in their favor; and (3) that the opinion of the Chief Justice be counted as a vote for the nullity of Executive Orders Nos. 225 and 226.

I

As regards the motion to disqualify Mr. Justice Padilla, the Court is of the opinion that it must not be considered, it having been presented after Mr. Justice Padilla had given his opinion on the merits of these cases. As we have once said "a litigant * * * cannot be permitted to speculate upon the action of the court and raise an objection of this sort after decision has been rendered." (Government of the Philippine Islands vs. Heirs of Abella, 49 Phil., 374.)

Furthermore, the fact that Justice Padilla, while Secretary of Justice, had advised the President on the question of emergency powers, does not disqualify him to act in these cases, for he cannot be considered as having acted previously in these actions as counsel of any of the parties. The President is not here a party.

All the members of this Court concur in the denial of the motion to disqualify Mr. Justice Padilla, with the exception of Mr. Justice Ozaeta and Mr. Justice Feria who reserve their vote.

II

With respect to the motion to include the vote and opinion of the late Mr. Justice Perfecto in the decision of these cases, it appears that Mr. Justice Perfecto died and ceased to be a member of this Court on August 17, 1949, and our decision in these cases was released for publication on August 26, 1949. Rule 53, section 1, in connection with Rule 58, section 1, of the Rules of Court, is as follows:

"SECTION 1. Judges: who may take part.—All matters submitted to the court for its consideration and adjudication will be deemed to be submitted for consideration and adjudication by any and all of the justices who are members of the court at the time when such matters are taken up for consideration and adjudication, whether such justices were or were not members of the court and whether they were or were not present at the date of submission; * * *."

Under this provision, one who is not a member of the court at the time an adjudication is made cannot take part in that adjudication. The word "adjudication" means decision. A case can be adjudicated only by means of a decision. And a decision of this Court, to be of value and binding force, must be in writing duly signed and promulgated (Article VIII, sections 11 and 12, of the Constitution; Republic Act No. 296, section 21; Rule 53, section 7, of the Rules of Court). Promulgation means the delivery of the decision to the Clerk of Court for filing and publication.

Accordingly, one who is no longer a member of this Court at the time a decision is signed and promulgated, cannot validly take part in that decision. As above indicated, the true decision of the Court is the decision signed by the Justices and duly promulgated. Before that decision is so signed and promulgated, there is no decision of the Court to speak of. The vote cast by a member of the Court after deliberation is always understood to be subject to confirmation at the time he has to sign the decision that is to be promulgated. That vote is of no value if it is not thus confirmed by the Justice casting it. The purpose of this practice is apparent. Members of this Court, even after they have cast their votes, wish to preserve their freedom of action till the last moment when they have to sign the decision, so that they may take full advantage of what they may believe to be the best fruit of their most mature reflection and deliberation. In consonance with this practice, before a decision is signed and promulgated, all opinions and conclusions stated during: and after the deliberation of the Court, remain in the breasts of the Justices, binding upon no one, not even upon the Justices themselves. Of course, they may serve for determining what the opinion of the majority provisionally is and for designating a member to prepare the decision of the Court, but in no way is that decision binding unless and until duly signed and promulgated.

And this is practically what we have said in the contempt case against Abelardo Subido,[1] promulgated on September 28, 1948:

"que un asunto o causa pendiente en esta Corte Suprema solo se considera decidido una vez registrada, promulgada y publicada la sentencia en la escribania, y que hasta entonces el resultado de la votacion se estima como una materia absolutamente reservada y confidencial, perteneciente exclusivamente a las cararas interiores de la Corte."

In an earlier case we had occasion to state that the decisive point is the date of promulgation of judgment. In that case a judge rendered his decision on January 14; qualified himself as Secretary of Finance on January 16; and his decision was promulgated on January 17. We held that the decision was void because at the time of its promulgation the judge who prepared it was no longer a judge. (*Lino Luna vs. Rodriguez*, 37 Phil., 186.)

Another reason why the vote and opinion of the late Mr. Justice Perfecto can not be considered in these cases is that his successor, Mr. Justice Torres, has been allowed by this Court to take part in the decision on the question of emergency powers because of lack of majority on that question. And Mr. Justice Torres is not bound to follow any opinion previously held by Mr. Justice Perfecto on that matter. There is no law or rule providing that a successor is a mere executor of his predecessor's will. On the contrary, the successor must act according to his own opinion for the simple reason that the responsibility for his action is his and of no one else. Of course, where a valid and recorded act has been executed by the predecessor and only a ministerial duty remains to be performed for its completion, the act must be completed accordingly. For instance, where the predecessor had rendered a valid judgment duly filed and promulgated, the entry of that judgment which is a ministerial duty, may be ordered by the successor as a matter of course. But even in that case, if the successor is moved to reconsider the decision, and he still may do so within the period provided by the rules, he is not bound to follow the opinion of his predecessor, which he may set aside according to what he may believe to be for the best interests of justice.

We are of the opinion, therefore, that the motion to include the vote and opinion of the late Justice Perfecto in the decision of these cases must be denied. Mr. Justice Paras, Mr. Justice Bengzon, Mr. Justice Padilla, Mr. Justice Montemayor, Mr. Justice Alex Reyes, and Mr. Justice Torres concur in this denial. Mr. Justice Ozaeta, Mr. Justice Feria and Mr. Justice Tuason dissent.

III

In connection with the motion to consider the opinion of the Chief Justice as a vote in favor of petitioners, the writer has the following to say:

In my previous concurring opinion, I expressed the view that the emergency powers vested in Commonwealth Act No. 671 had ceased in June 1945, but I voted for a deferment of judgment in these two cases because of two circumstances then present, namely, (1) the need of sustaining the two executive orders on appropriations as the lifeline of government and (2) the fact that a special session of Congress was to be held in a few days. I then asked, "Why not defer judgment and wait until the special session of Congress so that it may fulfill its duty as it clearly sees it?"

It seemed then to me unwise and inexpedient to force the Government into imminent disruption by allowing the nullity of the executive orders to follow its reglementary consequences when Congress was soon to be convened for the very purpose of passing, among other urgent measures, a valid appropriations act. Considering the facility with which Congress could remedy the existing anomaly, I deemed it a slavish submission to a constitutional formula for this Court to seize upon its power under the fundamental law to nullify the executive orders in question. A deferment of judgment struck me then as wise. I reasoned that judicial statesmanship, not judicial supremacy, was needed.

However, now that the holding of a special session of Congress for the purpose of remedying the nullity of the executive orders in question appears remote and uncertain, I am compelled to, and do hereby, give my unqualified concurrence in the decision penned by Mr. Justice Tuason declaring that these two executive orders were issued without authority of law.

While in voting for a temporary deferment of the judgment I was moved by the belief that positive compliance with the Constitution by the other branches of the Government, which is our prime concern in all these cases, would be effected, and indefinite deferment will produce the opposite result because it would legitimize a prolonged or permanent evasion of our organic law. Executive orders which are, in our opinion, repugnant to the Constitution, would be given permanent life, opening the way to practices which may undermine our constitutional structure.

The harmful consequences which, as I envisioned in my concurring opinion, would come to pass should the said executive orders be immediately declared null and void, are still real. They have not disappeared by reason of the fact that a special session of Congress is not now forthcoming. However, the remedy now lies in the hands of the Chief Executive and of Congress, for the Constitution vests in the former the power to call a special session should the need for one arise, and in the latter, the power to pass a valid appropriations act.

That Congress may again fail to pass a valid appropriations act is a remote possibility, for under the circumstances it fully realizes its great responsibility of saving the nation from breaking down; and furthermore, the President in the exercise of his constitutional powers may, if he so desires, compel Congress to remain in special session till it approves the legislative measures most needed by the country.

Democracy is on trial in the Philippines, and surely it will emerge victorious as a permanent way of life in this country, if each of the great branches of the Government, within its own allocated sphere, complies with its own constitutional duty, uncompromisingly and regardless of difficulties.

Our Republic is still young, and the vital principles underlying its organic structure should be maintained firm and strong, hard as the best of steel, so as to insure its growth and development along solid lines of a stable and vigorous democracy.

With my declaration that Executive Orders Nos. 225 and 226 are null and void, and with the vote to the same effect of Mr. Justice Ozaeta, Mr. Justice Paras, Mr. Justice Feria, Mr. Justice Tuason and Mr. Justice Montemayor, there is a sufficient majority to pronounce a valid judgment on that matter.

It is maintained by the Solicitor General and the amicus curiae that eight Justices are necessary to pronounce a judgment on the nullity of the executive orders in question, under section 9 of Republic Act No. 296 and Article VIII, section 10 of the Constitution. This theory is made to rest on the ground that said executive orders must be considered as laws, they having been issued by the Chief Executive in the exercise of the legislative powers delegated to him.

It is the opinion of the Court that the executive orders in question, even if issued within the powers validly vested in the Chief Executive, are not laws, although they may have the force of law, in exactly the same manner as the judgments of this Court, municipal ordinances and ordinary executive orders cannot be considered as laws, even if they have the force of law.

Under Article VI, section 26, of the Constitution, the only power which, in times of war or other national emergency, may be vested by Congress in the President, is the power "to promulgate rules and regulations to carry out a declared national policy." Consequently, the executive orders issued by the President in pursuance of the power delegated to him under that provision of the Constitution, may be considered only as rules and regulations. There is nothing either in the Constitution or in the Judiciary Act requiring the vote of eight Justices to nullify a rule or regulation or an executive order issued by the President. It is very significant that in the previous drafts of section 10, Article VIII of the Constitution, "executive order" and "regulation" were included among those that required for their nullification the vote of two thirds of all the members of the Court. But "executive order" and "regulation" were later deleted from the final draft (Aruego, *The Framing of the Philippine Constitution*, Vol. I, pp. 495, 496), and thus a mere majority of six members of this Court is enough to nullify them.

All the members of the Court concur in this view.

For all the foregoing, the Court denies the motion to disqualify Mr. Justice Padilla, and the motion to include the vote of the late Mr. Justice Perfecto in the decision of these cases. And it is the judgment of this Court to declare Executive Orders Nos. 225 and 226, null and void, with the dissent of Mr. Justice Bengzon, Mr. Justice Padilla and Mr. Justice Reyes, upon the grounds already stated in their respective opinions, and with Mr. Justice Torres abstaining.

But in order to avoid a possible disruption or interruption in the normal operation of the Government, it is decreed, by the majority, of course, that this judgment take effect upon the expiration of fifteen days from the date of its entry. No costs to be charged.

Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.
Feria, J., concurs plus his concurring opinion.

[1] 81 Phil., 517.

CONCURRING

FERIA, J.:

The respondents in the cases G. R. No. L-3054 and 3056 contend that the petitioners in said cases can not institute an action to invalidate the Executive Orders Nos. 225 and 226 promulgated, by the President, because they have no interest in preventing the illegal expenditures of moneys raised by taxation, and can not therefore question the validity of said executive orders requiring expenditures of public money.

Although this Supreme Court, in the case of *Custodio v. The President of the Senate*, G. R. No. L-117 (42 Off. Gaz. 1243), held in a minute resolution "That the constitutionality of a legislative act is open to attack only by a person whose rights are affected thereby, that one who invokes the power of the court to declare an Act of Congress to be unconstitutional must be able to show not only that the statute is invalid, but that he has sustained or is in immediate danger of sustaining some direct injury as the result of its enforcement," that ruling was laid down without a careful consideration and is contrary to the ruling laid down in the majority of jurisdictions in the United States that "In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute, the general rule is that not only persons individually affected, but also taxpayers, have sufficient interest in preventing the illegal expenditure of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys." (Am. Jur. Vol. 11, p. 761). All the members of this Court, except in taking cognizance of those cases, rejected the respondents contention, reversed the ruling in said case and adopted the general rule above mentioned; and we believe the latter is better than the one adopted in said case of *Custodio*, which was based on a doctrine adhered to only in few jurisdictions in the United States; because if a taxpayer can not attack the validity of the executive orders in question or a law requiring the expenditure of public moneys, no one under our laws could question the validity of such laws or executive orders.

After laying down the fundamental principles involved in the case at bar, we shall discuss and show that Commonwealth Act No. 671 was no longer in force at the time the Executive Orders under consideration were promulgated, because even the respondents in the cases G. R. Nos. 2044 and 2756, in sustaining the validity of the Executive Order No. 62 rely not only on Commonwealth Act No. 600 as amended by Commonwealth Act No. 620, but on Commonwealth Act No. 671; and afterwards we shall refute the arguments in support of the contrary proposition that said Commonwealth Act No. 671 is still in force and, therefore the President may exercise now the legislative powers therein delegated to him.

PRELIMINARY

The Constitution of the Philippines, drafted by the duly elected representatives of the Filipino people, provides in its Section 1, Article II, that "The Philippines is a republican state, sovereignty resides in the people and all government authority emanates from them." The people have delegated the government authority to three different and separate Departments: Legislative, Executive, and Judicial. In Section 1, Art. VI, the legislative power to make laws is conferred upon Congress; the executive power to faithfully execute the laws is vested by Sections 1 and 10 of Art. VII in the President; and the Judicial power is vested by Sec. 1, Art. VII, in one Supreme Court and in such inferior courts as may be established by law, the Supreme Court having the supremacy to pass upon "the constitutionality or validity of any treaty, law, ordinance, or executive order or regulations."

The distribution by the Constitution of the powers of government to the Legislative, Executive, and Judicial Departments operates, by implication, as an inhibition against the exercise by one department of the powers which belong to another, and imposes upon each of the three departments the duty of exercising its own peculiar powers

by itself, and prohibits the delegation of any of those powers except in cases expressly permitted by the Constitution. The principle of the separation of the powers of government is fundamental to the very existence of a constitutional government as established in the Philippines patterned after that of the United States of America. The division of governmental powers into legislative, executive, and judicial represents the most important principle of government that guarantees the liberties of the people, for it prevents a concentration of powers in the hands of one person or class of persons.

Under the doctrine of separation of the powers of government, the law-making function is assigned exclusively to the legislature, and the legislative branch cannot delegate the power to make laws to any other authority. But it must be borne in mind that what cannot be delegated is that which is purely legislative in nature, not administrative. There are powers so far legislative that may properly be exercised by the legislature, but which may nevertheless be delegated because they may be advantageously exercised in proper cases by persons belonging to the other departments of the government, such as the authority to make rules and regulations of administrative character to carry out an express legislative purpose or to effect the operation and enforcement of a law. As illustrations of the proper exercise of the power of Congress to delegate the authority to promulgate rules and regulations with the necessary details to carry into effect a law, are Act No. 3155 empowering the Governor General then, now the President, to suspend or not, at his discretion, the prohibition of the importation of foreign cattle (*Cruz v. Youngberg*, 56 Phil. 254); Act No. 3106 authorizing the Commissioner of the Public Service Commission to regulate those engaged in various occupations or businesses affected with a public interest, and to prescribe what the charges shall be for services rendered in the conduct of such business; (*Cebu Autobus Co. vs. De Jesus*, 56 Phil. 446); and the "National Industrial Recovery Act enacted by the Congress of the United States authorizing the President to promulgate administrative rules and regulations to carry out the emergency measure enacted by Congress, though a part thereof was declared unconstitutional for producing a delegation of legislative authority which is unconfined, "and not canalized within banks to keep it from overflowing."

Although, in principle, the power of the Legislature to make laws or perform acts purely legislative in nature may only be delegated by Congress to another authority or officer of either the executive or judicial department when expressly permitted by the Constitution, no such delegation is authorized by the State Constitution or federal Constitution of the United States. It is a fact admitted by the attorneys and amici curiae for the petitioners and respondents in these cases that Sec. 26, Article VI, of our Constitution is unique and has no counterpart in said Constitutions, and for that reason not a single case involving a question similar to the one herein involved has ever been submitted to and passed upon by the Courts of last resort in the United States. The provision of our Constitution reads as follows:

"SEC. 26. In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy."

It is important to observe that what the above quoted constitutional provision empowers Congress to delegate to the President, is not the power to promulgate rules and regulations of administrative nature, for this may also be delegated at any time without necessity of an express authority by the Constitution, but the power to promulgate rules and regulations purely legislative in nature, leaving to the discretion of the President the determination of what rules or regulations shall be or what acts are necessary to effectuate the so-called declared national policy, for otherwise it would not have been necessary for the Constitution to authorize Congress to make such delegation.

DEMONSTRATION

The Constitution permits Congress to authorize the President of the Philippines to promulgate rules and regulations, of legislative nature only (1) in times of war or (2) other national emergency, such as rebellion, flood, earthquake, pestilence, economic depression, famine or any other emergency different from war itself affecting the nation.

It is obvious that it is for Congress and not for the President to determine when there is such a particular emergency and to authorize the President to promulgate rules and regulations to cope with it. Therefore, if Congress declares that there exists a war as a national emergency and empowers the President to promulgate rules and regulations to tide over the emergency, the latter could not, because he believes that there is an economic emergency or depression or any emergency other than war itself, exercise the legislative power delegated to meet such economic or other emergency.

The Constitution requires also that the delegation be for a limited period or the authority so delegated shall cease ipso facto at the expiration of the period, because to require an express legislation to repeal or terminate the delegated legislative authority of the President might be subversive to the constitutional separation of powers in our democratic form, of government, for the President may prevent indefinitely the repeal of his delegated authority by the exercise of his veto power, since the veto could be overridden only by a two-thirds vote and it would be extremely difficult to repeal it in a subservient Congress dominated by the Chief Executive. Besides to provide that the delegated legislative powers shall continue to exist until repealed by the Congress, would be a delegation not for a limited, but for an unlimited period or rather without any limitation at all, because all acts enacted are always subject to repeal by the Congress, without necessity of providing so.

No question is raised as to the constitutionality of Commonwealth Act No. 671 under which Executive Orders Nos. 62, 192, 225 and 226 were promulgated by the president of the Philippines according to the contention of the respondents. The question involved is the validity (not constitutionality) of said executive orders, that is, whether or not the President had authority to promulgate them under Commonwealth Act No. 671; and therefore the concurrence of two-thirds of all the members of this Court required by Section 10, Article VIII of the Constitution to declare a treaty or law unconstitutional is not required for adjudging the executive orders in question invalid or not authorized by Commonwealth Act No. 671 which reads as follows:

"COMMONWEALTH ACT NO. 671

"AN ACT DECLARING A STAGE OF TOTAL EMERGENCY AS A RESULT OF WAR INVOLVING THE PHILIPPINES AND AUTHORIZING THE PRESIDENT TO PROMULGATE RULES AND REGULATIONS TO MEET SUCH EMERGENCY.

"Be it enacted- by the National Assembly of the Philippines:

"SECTION 1. The existence of war between the United States and other countries of Europe and Asia, Which involves the Philippines, makes it necessary to invest the President with extraordinary powers in order to meet the resulting emergency.

"SEC. 2. Pursuant to the provisions of Article VI, section 16, of the Constitution, the President is hereby authorized, during the existence of the emergency, to promulgate such rules and regulations as he may deem necessary to carry out the national policy, declared in section 1 hereof. Accordingly, he is, among other things, empowered (a) to transfer the seat of the Government, or any of its subdivisions, branches, departments, offices, agencies or instrumentalities; (b) to reorganize the Government of the Commonwealth including the determination of the order of precedents of the heads of the Executive Departments; (c) to create new subdivisions, branches, departments, offices, agencies or instrumentalities of government and to abolish any of

those already existing; (d) to continue in force laws and appropriations which would lapse or otherwise become inoperative, and to modify or suspend the operation or application of those of an administrative character; (e) to impose new taxes or to increase, reduce, suspend, or abolish those in existence; (f) to raise funds through the issuance of bonds or otherwise, and to authorize the expenditure of the proceeds thereof; (g) to authorize the National, provincial, city or municipal governments to incur in overdrafts for purposes that he may approve; (h) to declare the suspension of the collection of credits or the payment of debts; and (i) to exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce its authority.

"SEC. 3. The President of the Philippines shall as soon as practicable upon the convening of the Congress of the Philippines report thereto all the rules and regulations promulgated by him under the powers herein granted.

"SEC. 4. This Act shall take effect upon its approval, and the rules and regulations promulgated hereunder shall be in force and effect until the Congress of the Philippines shall otherwise provide.

"Approved, December 16, 1941."

Taking into consideration the presumption that Congress was familiar with the well-known limits of its powers under section 26, Art. VI, of the Constitution and did not intend to exceed said powers in enacting Commonwealth Act No. 671, the express provisions of Commonwealth Acts Nos. 494, 496, 498, 499, 500, 600 as amended by 620 and 671, and those of Commonwealth Act No. 689 as amended by Republic Act No. 66 and Republic Acts Nos. 51 and 728, we are of the opinion, and therefore so hold, that the actual war in Philippine territory and not any other national emergency is contemplated in Commonwealth Act No. 671, and that the period of time during which the President was empowered by said Commonwealth Act No. 671 to promulgate rules and regulations was limited to the existence of such war or invasion of the Philippines by the enemy, which prevented the Congress to meet in a regular session. Such emergency having ceased to exist upon the complete liberation of the Philippines from the enemy's occupation, Commonwealth Act No. 671 had ceased to be in force and effect at the date of the adjournment of the next regular session of the Congress in 1946, before the promulgation of said executive orders, and hence they are null and void.

In view of the existence of a state of national emergency caused by the last world war among several nations of the world, the second National Assembly during its second special session passed the following Acts: (a) Commonwealth Act No. 494 authorizing the President until the adjournment of the next regular session of the National Assembly, to suspend the operation of Commonwealth Act No. 444, commonly known as the "Eight-Hour Labor Law," when in his judgment the public interest so requires, in order to prevent a dislocation of the productive forces of the country; (b) Commonwealth Act No. 496 delegating to the president the power expressly granted by Sec. 6, Art. XIII, of the Constitution to the State "until the date of adjournment of the next regular session of the National Assembly, to take over solely for use or operation by the government during the existence of the emergency, any public service or enterprise and to operate the same," upon payment of just compensation; (c) Commonwealth Act No. 498, authorizing the President, among others, to fix the maximum selling prices of foods, clothing, fuel, fertilizers, chemicals, building materials, implements, machinery, and equipment required in agriculture and industry, and other articles or commodities of prime necessity, and to promulgate such rules and regulations as he may deem necessary in the public interests, which rules and regulations shall have the force and effect of law until the date of the adjournment of the next regular session of the National Assembly; (d) Commonwealth Act No. 499 providing that until the date of the adjournment of the next regular session of the National Assembly, any sale, mortgage, lease, charter, delivery, transfer of vessels owned in whole or in part by a citizen of the or by a corporation organized under the laws of the Philippines, to any person not a citizen of the United States of the Philippines, shall be null and void without the approval of the

President of the Philippines; and Commonwealth Act 500 authorizing the President to reduce the expenditure of the Executive Department of the national Government by the suspension or abandonment of services, activities or operations of no immediate necessity, which authority shall be exercised only when the National Assembly is not in session. All these Commonwealth Acts took effect upon their approval on September 30, 1939, a short time after the invasion of Poland by Germany.

During the fourth special session of the second National Assembly, Commonwealth Act No. 600, which superseded the above-mentioned emergency power acts, was passed and took effect on its approval on August 19, 1940. This Act No. 600 expressly declared that the existence of war in many parts of the world had created a national emergency which made it necessary to invest the President with extraordinary powers in order to safeguard the integrity of the Philippines and to insure the tranquility of its inhabitants, by suppressing espionage, lawlessness, and all subversive activities, by preventing or relieving unemployment, by insuring to the people adequate shelter and clothing and, sufficient food supply, etc. To carry out this policy the President was "authorized to promulgate rules and regulations which shall have the force and effect of law until the date of adjournment of the next regular session of the National Assembly," which rules and regulations may embrace the objects therein enumerated. And the National Assembly in its regular session commencing in January 1941, in view of the fact that the delegated authority granted to the President by Commonwealth Acts Nos. 494, 496, 498, 499, 500, and 600, was to terminate at the date of the adjournment of that regular session of the National Assembly, passed Act No. 620 which took effect upon its approval on June 6, 1941, amending section 1 of Commonwealth Act No. 600 by extending the delegated legislative authority of the President until the date of the adjournment of the next regular session of the Congress of the Philippines, instead of the National Assembly, the Constitution having been amended by substituting the Congress of the Philippines for the National Assembly.

Although Commonwealth Act No. 600, as amended by Commonwealth Act No. 620, provides that "the President is authorized to promulgate rules and regulations which shall have the force and effect of law until the date of adjournment of the next regular session of the Congress of the Philippines," it is evident that this limitation was intended to apply, not only to the effectivity of the rules and regulations already promulgated, but specially to the authority granted to the President to promulgate them, for the following reasons: First, because Commonwealth Acts Nos. 494, 496, 498, 499 and 500 had expressly limited the authority of the President to exercise the delegated power while the Assembly was not in session until the date of the adjournment of the next regular session of the National Assembly, and there was absolutely no reason whatsoever why the National Assembly, in enacting Commonwealth Act No. 600 as amended, which superseded said Acts, would not impose the same limitation on the authority delegated in Commonwealth Act No. 600 as amended in compliance with the requirement of the Constitution; secondly, because it would have been useless to give the rules and regulations the effect and force of law only until the date of the adjournment of the next regular session of the Congress, if the President might after said adjournment, continue exercising his delegated legislative powers to promulgate again the same and other rules and regulations; and lastly, because to construe Commonwealth Act No. 500, as amended by Act No. 620 otherwise would be to make the delegation not for a limited but for an indefinite period of time, in violation of the express provision of Section 26, Art. VI of the Constitution.

All the above-mentioned Acts No. 494, 496, 499, 500, and 600 before its amendment show that it was the intention or policy of the National Assembly, in delegating legislative functions to the Presidents to limit the exercise of the latter's authority to the interregnum while the National Assembly or Congress of the Philippines was not in session until the date of the adjournment of the next regular session thereof which interregnum might have extended over a long period of time had the war in Europe involved and made the Philippines a battle ground before the next regular session of the Congress had convened the authority granted to the President of Commonwealth Act No. 600 as amended had to be extended over a long period of time during the occupation

because, before the meeting of the next regular session of the Congress. The Philippines was involved in the war of the United States and invaded and occupied by the Japanese forces. And the President was authorized to exercise his delegated powers until the date of the adjournment of the next regular session of the Congress, for the reason that although during the next regular session a bill may be passed by the Congress, it would not become a law until it was approved, expressly or impliedly, by the President during the period of twenty days after it shall have been presented to him.

The reason of the limitation is that if Congress were in position to act it would not be necessary for it to make such legislative delegation to the President, for Congress may in all cases act, declares its will and, after fixing a primary standard or yardstick, authorize the President to fill up the details by prescribing administrative rules and regulations to cope with the actual conditions of any emergency; and it is inconceivable that there may arise an emergency of such a nature that would require immediate action and can not wait, without irreparable or great injury to the public interest, an action of the legislature in regular or special session called by the Chief Executive for the purpose of meeting it. If in the United States they could withstand and have withstood all kinds of emergency without resorting to the delegation by the legislative body of legislative power to the Executive except those of administrative nature, because no such delegation is permitted by the State and Federal Constitutions, as above stated, there is no reason why the same can not be done in the Philippines. The framers of our Constitution and the National Assembly that enacted Commonwealth Act No. 671 are presumed to be aware of the inconveniences and chaotic consequences of having two legislative bodies acting at one and the same time.

It is true that Commonwealth Act No. 671 does not expressly say that the President is authorized to promulgate rules and regulations until the date of the adjournment of the next regular session of the National Assembly or Congress, as the above-quoted Commonwealth Acts; but it is also true that it clearly provides that "pursuant to the provisions of Art. VI, Section 26, of the Constitution, the President is hereby authorized, during the existence of the emergency, to promulgate rules and regulations as he may deem necessary to carry out the national policy declared"; and that the definite and specific emergency therein referred to is no other than the "state of total emergency as a result of war involving the Philippines," declared in the title of said Act No. 671, that was the reason for which the President was "authorized to promulgate rules and regulations to meet the resulting emergency." It is obvious that what Act No. 671 calls "total emergency" was the invasion occupation of the Philippines by the enemy or Japanese forces which, at the time of the passage and approval of said Act, had already landed in Philippine soil and was expected to paralyze the functioning of the Congress during the invasion and enemy occupation of the Philippines.

The mere existence of the last world war in many parts of the world which had created a national emergency and made it necessary to invest the President with extra ordinary powers was not called total emergency by Commonwealth Acts Nos. 600 and 620, because it had not yet actually involved and engulfed the Philippines in the maelstrom of war. It does not stand to reason that the authority given to the President to promulgate rules and regulations of legislative nature by Commonwealth Acts Nos. 494, 496, 498, 499, 500, 600 and 620 was to terminate at the date of the adjournment of the next regular session of the Congress of the Philippines in 1946, but those granted to the president by Commonwealth Act No. 671 under the same war emergency should continue to exist indefinitely even after the Congress of the Philippines had regularly convened, acted, and adjourned in the year 1946 and subsequent years. Besides to give such construction to Act No. 671 would make it violative of the express provision of Section 26, Article VIII, of the Constitution, under which said Commonwealth was enacted, as expressly stated in said Act, and which permits the Congress to authorize the President, only for a limited period during a war emergency, to promulgate rules and regulations to carry into effect a declared national policy.

By the special session of the first Congress of the Philippines commencing on the 9th day of June, 1945, called by

the President for the purpose of considering general legislation, Commonwealth Act No. 671 did not cease to operate. As we have already said, the emergency which prompted the second National Assembly to enact Commonwealth Act No. 671 delegating legislative powers to the President, was the inability of Congress to convene in regular session in January of every year during the invasion of the Philippines by the Japanese Imperial forces. The National Assembly could not have in mind any special session which might have been called by the President immediately after liberation, because the calling of a special session as well as the matters which may be submitted by the President to Congress for consideration is a contingent event which depends upon the possibility of convening it aid the discretion of the President to call it, and the matters he will submit to it for consideration; because it is to be presumed, in order to comply with the provision of Section 26, Article VI of the Constitution, that it was the intention of the National Assembly to fix a limited period, independent of the President's will, during which he is authorized to exercise his delegated legislative power.

The object of Section 3 or Act No. 671 in requiring the President to report "as soon as practicable upon the convening of the Congress of the Philippines all rules and regulations promulgated by him under the powers therein granted." is to inform the Congress of the contents of said rules and regulations so that the latter may modify or repeal them if it sees fit to do so, inasmuch as, according to section 4 of the same act "the rules and regulations promulgated hereunder shall be in force and effect until the Congress shall otherwise provide." And although said Sec. 3 does not specify whether in regular or special session, it is evident that it refers to the next regular and not to the special session of the Congress, because as a rule a special session is called to consider only specific matters submitted by the President to Congress for consideration, and it would be useless to submit such report to the Congress in special session if the latter can not either modify or repeal such rules and regulations; and besides, it is to be presumed that it was the intention of the National Assembly in enacting section 3 of Commonwealth Act No. 671 to require the submission of a report to the next regular session of the Assembly or Congress, as provided in section 4 of Commonwealth Act No. 600, as amended by Commonwealth Act No. 620, which required a similar report, for there was absolutely no plausible reason to provide otherwise.

Our conclusion is corroborated by the fact that Section 3 or Act 671 only requires the President to submit the report, "as soon as practicable upon the convening of the Congress" and not to submit a report to the Congress every time it convenes, in order to inform the Congress thereof so that the latter may modify or repeal any or all of them, for under section 4 of the same Act "such rules and regulations shall continue in force and effect until the Congress shall otherwise provide." It is obvious that the convening of the Congress referred to in said Section 3 is the next regular session of the Congress after the passage of Act No. 671, and not any other subsequent sessions; because, otherwise, it would not have required that it shall be submitted to the Congress as soon as practicable and the purpose of the law already stated in requiring the submission of the report would be defeated, and if it were the intention of said Commonwealth Act No. 671 to authorize the President to continue promulgating rules and regulations after the next regular session of the Congress, it would have required the President to submit to the Congress each and every time it convenes a report of the rules and regulations promulgated after his previous reports had been submitted.

Furthermore, our conclusion is confirmed by the legislative interpretation given to Commonwealth Act No. 671 by the same Congress in enacting Commonwealth Act No. 728 which took effect on July 2, 1946, authorizing the President to regulate, control, curtail , and prohibit the exploration of agricultural or industrial products, merchandise, articles, materials and supplies without the permit of the President until December 31, 1948, as expressly provided in Section 4 thereof, because it would not have been necessary for the Congress to promulgate said, Act No. 728 if the President had authority to promulgate Executive Order No. 62 in question on January 1, 1949, under Commonwealth Act No. 671 as contended by the respondents; and Republic Act No. 51, approved on October 4, 1946, authorizing the President of the Philippines to reorganize within one year the different executive

departments, bureaus, offices, agencies and other instrumentalities of the government, including corporations controlled by it, would not have been passed by the Congress if Commonwealth Act No. 671 under consideration was then still in force, for Sec. 2 (b) and (c) of said Act No. 671 authorizes the President to reorganize the Government and to create new subdivisions, branches, department offices, agencies or instrumentalities of government, and to abolish any of those already existing.

REFUTATION

There is no force in the argument that the executive orders in question are not valid, not because the promulgation of the acts above mentioned and of Commonwealth Act No. 689 as amended by the Republic Act No. 66 on rentals, the appropriation acts or Republic Acts Nos. 1, 156, and 320 for the years 1946-47, 1947-48 and 1948-49, and Republic Acts Nos. 73, 147, and 235 appropriating public funds to defray the expenses for the elections held in 1947 and 1948, shows that the emergency powers granted by Commonwealth Act No. 671 had already ceased to exist, but because Congress "has shown by their enactment its readiness and ability to legislate on those matters, and had withdrawn it from the realm of presidential legislation or regulations under the powers delegated by Commonwealth Act No. 671." If the Congress was ready and able to legislate on those matters since 1946 and for that reason the executive orders herein involved are null and void, there is no valid reason for not concluding that the emergency powers of the President has ceased to exist in 1946, because since then the Congress could, although it did not, legislate on all matters on which the President was granted delegated power to legislate by the Commonwealth Act No. 671. And in Commonwealth Act No. 671 continues to be in force and effect in so far as it grants delegated legislative powers to the President and declares the national policy to be carried out by the rules and regulations the President is authorized to promulgate, the mere promulgation of the acts above described can not be considered as an implied repeal or withdrawal of the authority of the President to promulgate rules and regulations only on those matters and the adoption of a contrary policy by the Congress, because implied repeal is not favored in statutory construction, and the national policy referred to in Sec. 26, Art. VIII of the Constitution is to be declared by the Congress in delegating the legislative powers to the President in order to establish the standard to be carried out by him in exercising his delegated functions, and not in repealing said powers.

As we have already said, section 26, Article VI of the Constitution expressly empowers Congress, in times of war and other national emergency, to authorize the President to promulgate rules and regulations to carry out a declared national policy, and therefore it is for the National Assembly to determine the existence of a particular emergency, declare the national policy, and authorizes the President to promulgate rules and regulations of legislative nature to carry out that policy. As the National Assembly has determined and specified in Commonwealth Act No. 671 that the existence of war between the United States and other countries of Europe and Asia which involves the Philippines as the emergency which made it necessary for the National Assembly to invest the President with extraordinary powers to promulgate rules and regulations to meet the resulting emergency from the actual existence of that war which involved the Philippines, the President cannot, under said Act No. 671, determine the existence of any other emergency, such as the state of cold war, the continued military occupation of the enemy country, the disorder in central Luzon, the current inflation, and the economic and political instability throughout the world, cited by the respondents, and promulgate rules and regulations to meet the emergency; because obviously it is not for the delegate but for the delegant to say when and under what circumstances the former may act in behalf of the latter, and not vice-versa.

The theory of those who are of the opinion that the President may determine "whether the emergency which on December 16, 1941, prompted the approval of Commonwealth Act No. 671 delegating extraordinary powers to the President, still existed at the time the Chief Executive exercised those powers," is predicated upon the erroneous assumption that said Commonwealth Act No. 671 contemplated any other emergency not expressly

mentioned in said Commonwealth Act. This assumption or premise is obviously wrong. Sec. 1 of said Act No. 671 expressly states that "the existence of the war between the United States and other countries of Europe and Asia which involves the Philippines makes it necessary to invest the President with extraordinary power in order to meet the resulting emergency," That is the war emergency And it is evident, and therefore no evidence is required to prove, that the existence of the war which involved the Philippines had already ceased before the promulgation of the executive orders in question, or at least, if the last war has not yet technically terminated in so far as the United States is concerned, it did no longer involve the Republic of the Philippines since the inauguration of our Republic or independence from the sovereignty of the United States.

It is untenable to contend that the words "resulting emergency from the existence of the war" as used in Section 1 of Commonwealth Act No. 671 should be construed to mean any emergency resulting from or that is the effect of the last war, and not the war emergency itself, and that therefore it is for the President to determine whether at the time of the promulgation of the executive orders under consideration such emergency still existed, because such contention would make Act No. 671 unconstitutional or violative of the provisions of Section 26, Article VI of the Constitution. This constitutional precept distinguished war emergency from any other national emergency, such as an economic depression and others which may be the effect of a war, and empowers the Congress in times of war and other national emergency, to be determined by Congress itself as we have already said and shown, to authorize the President, for a limited period that may be shorter or of the same duration but not longer than that of the emergency, to promulgate rules and regulations to carry out the policy declared by the Congress in order to meet the emergency. To construe Commonwealth Act No. 671 as contended would be to leave the determination of the existence of the emergency to the discretion of the President, because the effects of the war such as those enumerated by the respondents are not determined or stated in said Act and could not have been foreseen by the Assembly in enacting said Act; and because it would make the delegation of powers for an indefinite period since such an emergency may or may not become a reality and it may arise a short or long time after the last war. It is of judicial notice that the economic depression, effect of the first world war, took place in the year 1929, or about ten years after the cessation of hostilities in the year 1919; and by no stretch of imagination or intellectual gymnastics may the failure of the Congress to appropriate funds for the operation of the Government during the period from July 1st, 1949 to June 30, 1950, and to defray the expenses in connection with the holding of the national election on the second Tuesday of November, 1949, be considered as an emergency resulting from the last war.

"In the enactment of emergency police measures, the question as to whether an emergency exists is primarily for the legislature to determine. Such determination, although entitled to great respect, is not conclusive because the courts, in such cases, possess the final authority to determine whether an emergency in fact exists." (American Jurisprudence, Vol. XI, p. 980).

No case decided by the courts of last resort in the United States may be cited in support of the proposition that it is for the president to determine whether there exists an emergency in order to exercise his emergency powers, and "it is not for the judiciary to review the finding of the Executive in this regard." There is none and there cannot be any. Because, as we have already stated at the beginning of this opinion, and we are supported by the above quotation from American Jurisprudence, the power to pass emergency police legislation in the United States may be exercised only by the legislature in the exercise of the police power of the State, and it can not be delegated the Executive because there is no provision in the State, and Federal Constitutions authorizing such delegation as we have in Sec. 26, Art. VI, of our Constitution. As we have already said before, the only legislative power which may be delegated to the executives and other administrative bodies or officers in the United States is the power to promulgate rules and regulations of administrative nature, which does not include the exercise of the police power of the State.

The ruling laid down by the United States Supreme Court in the case *Ludecke v. Watkins*, 92 L. ed. 1883, quoted

by the respondents and dissenters in support of the proposition that "only in case of a manifest abuse of the exercise of powers by a political branch of the government is judicial interference allowable in order to maintain the supremacy of the Constitution," has no application to the present case; because the question involved in the present case is not a political but a justiciable question, while the question in issue in said Ludecke case was the power of the court to review "the determination of the President in the postwar period that an alien enemy should be deported, even though active hostilities have ceased," and it was held that it was a political question and, therefore, was not subject to judicial review.

CONCLUSION

In view of all the foregoing, we have to conclude and declare that the executive orders promulgated by the President under Commonwealth Act No. 671 before the date of the adjournment of the regular session of the Congress of the Philippines in 1946 are valid, because said Commonwealth Act was then still in force; but the executive orders promulgated after the said date are null and void, because Commonwealth Act No. 671 had already ceased to be in force in so far as the delegation of powers was concerned. Therefore are null and void the Executive Order No. 62 dated June 21, 1947, regulating rentals for houses and lots for residential purposes; the Executive Order No. 192 promulgated on December 24, 1948, on the control of exports from the Philippines; the Executive Order No. 225 dated June 15, 1949, appropriating funds for the operation of the Government of the Republic of the Philippines during the period from July 1st 1949 to June 30, 1950; and the Executive Order No. 226 promulgated on June 15, 1949, appropriating the sum of Six Million pesos to defray the expenses in connection with, and incidental to, the holding of the national election to be held on the second Tuesday of November 1949.

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