

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. EUSEBIO LOPEZ, ASSOCIATE JUDGE OF SECOND DIVISION OF PEOPLE'S COURT, BENIGNO S. AQUINO, AND ANTONIO DE LAS ALAS, RESPONDENTS.

G. R. No. L-1243. April 14, 1947

Ponente: PERFECTO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d8e774d3cec1/>

PERFECTO, J.:

Solicitor General Lorenzo M. Tanada, as head of the Office of Special Prosecutors, and Prosecutors Juan R. Liwag and Pedro C. Quinto filed, in the name of the People of the Philippines, a petition praying that a writ of prohibition be issued commanding Associate Judge Eusebio M. Lopez, of the Second Division of the People's Court, "to desist from further proceedings in, or further exercising his jurisdiction in the trial of, and from otherwise taking further cognizance of criminal cases for treason against Benigno S. Aquino (No. 3527) and against Antonio de las Alas (No. 3531), and other treason cases of the same nature actually pending before the Second Division of the People's Court or in any other division where he may hereafter be assigned, and declaring him disqualified to sit therein."

On March 14, 1946, an information for treason was filed in criminal case No. 3534 against Guillermo B. Francisco. The accused entered his plea of not guilty and the case was heard on diverse days in the months of June and July, 1946, before the Second Division of the People's Court, composed of Associate Judges Salvador Abad Santos and Jose P. Veluz and the respondent judge.

After the prosecution had rested its case, counsel for the accused moved to dismiss, upon the sole ground that the overt acts charged in the information were not testified to by two witnesses as required by the treason law, article 114 of the Revised Penal Code.

On August 24, 1946, a decision penned by Associate Judge Salvador Abad Santos, dated August 15, 1946, and concurred in by Associate Judge Jose P. Veluz, was promulgated, dismissing the case. Associate Judge Lopez reserved his decision.

On September 26, 1946, Judge Lopez promulgated a separate concurring opinion in which, according to the petition, "not satisfied with dismissing the aforementioned case on the ground raised by the accused therein, expressed views and conclusions of facts, not warranted by the evidence or by the issues raised by the parties nor necessary to the decision of the case, justifying the aid and comfort given to the Empire of Japan by the 'Filipino leaders' or the so-called political collaborators and holding them in effect to be patriots and therefore not guilty of the crime of treason with which they stand charged."

Upon the allegation that "the respondent judge had shown that he does not possess that unprejudiced, dispassionate, unbiased and impartial state of mind in regard to the cases of the political collaborators now pending trial in the People's Court, which is a requisite under the statute and which is essential and necessary as a

matter of right in the proper administration of justice," the prosecution filed petitions to disqualify respondent judge from sitting and participating in any manner in the hearing and decision of the criminal cases against Benigno S. Aquino and Antonio de las Alas and other treason cases of the same nature pending before the Second Division of the People's Court. It is alleged that the petitions were filed under section 7 of Commonwealth Act No. 682, otherwise known as the People's Court Act, in relation to section 1 of Rule 124.

After due hearing and argument, the majority of the Second Division, Judges Abad Santos and Veluz, promulgated a resolution on November 8, 1946, granting the motions for the disqualification of Judge Lopez. On the same date Judge Lopez promulgated a resolution denying them.

The petition alleges that in said separate resolution respondent judge "again manifested his bias and prejudice in favor of political collaborators" and reaffirmed with more vigor the views and conclusions he expressed in his concurring opinion in the case of *People vs. Guillermo B. Francisco* as shown by the following excerpts:

"* * * that President Quezon gave instructions to the Filipino leaders before his departure for the United States, giving details of those instructions; that the Filipino leaders surrendered to the enemy and accepted services in the two puppet governments because they had to and because they were coerced to do so; * * * that the co-operation the Filipinos gave to the Japanese army was feigned and not real; * * *." (P. 11, Resolution, Annex I.)

* * * * *

"The prosecution asserts that under my theory of the law all the political collaborators now facing charges of treason in this court cannot be convicted because I would decide them in accordance with my concurring opinion. I am only one of the fifteen judges in the People's Court. Even in my division I cannot presume to control the majority. But the prosecution can rest assured that if I could be given the sole power to decide the cases against political collaborators and all the other cases pending before the People's Court, I would dismiss every single one of them if the charges were limited to acts legal under the law of the occupant and not in contravention of the limitations upon the powers of the enemy established by international law." (P. 24, Resolution, Annex I.)

It is alleged in the petition that the respondent judge did not appeal from the resolution of the majority of his division and expressed his determination to maintain his minority view and to disregard entirely the majority opinion and has announced publicly his intention to continue participating in the consideration of the cases against Benigno S. Aquino and Antonio de las Alas as well as in other treason cases of the same nature, now pending before the Second Division, and that the respondent is duty bound to respect and obey the resolution of the majority, and any further intervention in his part in further proceedings, trial and decision of the above-mentioned cases, and other similar cases of political collaborators "is without or in excess of his jurisdiction and power as Associate Judge and will constitute a grave abuse of judicial functions," and that trial of the aforesaid cases, including those against Pio Duran (No. 3324), Francisco Lavides (No. 3523), Vicente Madrigal (No. 3521), and Leon Guinto (No. 3535), will soon come up before the Second Division of the People's Court.

Judge Lopez filed his answer referring to the reasons stated in his resolution denying the petitions to disqualify him which is marked as Annex I of the petition.

Respondent Benigno S. Aquino alleged in his answer that it is not true that Judge Lopez expressed views and conclusions of fact not warranted by the evidence or by the issues raised by the parties, nor necessary to the decision of the case against Guillermo B. Francisco, and that his pronouncements in his concurring opinion, on the contrary, "were made not only in compliance with the constitutional requirement that any decision rendered by any court of record must express clearly and distinctly the facts and the law on which it is based (Article VIII, section 12, of the Constitution), but also in obedience to the exigencies of the statute that all questions of fact and

law raised by the defendant's plea of not guilty be resolved by the court."

He alleges also that the resolution of Judges Abad Santos and Veluz, granting the petitions to disqualify Judge Lopez, is contrary to law and to the repeated decisions of the Supreme Court, and that the resolution of Judge Lopez was not manifestation of his bias and prejudice in favor of political collaborators, but was merely a restatement of the law and a summary of well-known principles of international law and the law of evidence; that the majority cannot remove Judge Lopez from the Second Division, and any attempt to this effect, being unlawful, can be ignored by him.

As special defenses, respondent Aquino alleges that the petition is in fact an attempt to remove Judge Lopez from the People's Court for a cause and not in a manner provided for in existing laws, contrary to the provisions of section 5, of Commonwealth Act No. 682, creating the People's Court, since under the guise of disqualifying him, "it seeks to bar respondent Judge Lopez from sitting and participating in the trial and deliberation of cases assigned to the Second Division of the People's Court," and that there is no authority of law for the institution of the present proceedings, for the reason that under Commonwealth Act No. 682, the People's Court can only act either in banc or in division of three judges.

Respondent Antonio de las Alas denies in his answer that the concurring opinion of Judge Lopez in the Guillermo B. Francisco case expressed views and conclusions of facts not warranted by the evidence or by the issues raised by the parties nor necessary to the decision of the case, and denies the allegation that the respondent judge does not possess that unprejudiced, dispassionate, unbiased and impartial state of mind in regard to the cases of the political collaborators.

The same respondent alleged as special defenses the following:

"1. That the conclusion of respondent Judge on treasonable collaborations as shown by his concurring opinion in the Francisco case, far from betraying bias or prejudice demonstrates on its face a careful and exhaustive study of the applicable principles of international law to the acts of the inhabitants of a territory under military occupation.

"(a) Such findings of facts and conclusion of law therefore do not constitute bias and prejudice in favor of political collaborators nor are they unfair to State or the prosecution.

"2. That even on the assumption that such a conclusion of law may possibly reflect bias and prejudice in favor of political collaborators, that of itself does not suffice for the disqualification as—

"(a) Disqualification may be sought only on any one of the grounds explicitly set forth in the law, bias or prejudice not being one of them (Rule 126, Rules of Court; section 7 of Commonwealth Act 682; Joaquin vs. Barreto, 25 Phil., 281; Perfecto vs. Contreras, 28 Phil., 538; U. S. vs. Baluyot, 40 Phil., 385; Benusa vs. Torres, 55 Phil., 747; Arteche vs. De la Rosa, 58 Phil., 589).

"3. That even if disqualification may be predicated on bias and prejudice, respondent Judge should not under the circumstances of this case be disqualified as the effect thereof would be—

"(a) To penalize the respondent Judge not for an attitude of favoritism or hostility to either party in controversy but for a conclusion of law on a matter which admits of controversy, a conclusion arrived at after careful study and investigation and supported and fortified by a wealth of citation from applicable decisions of the United States Supreme Court, pertinent portions of the Hague Convention and excerpts from the authoritative text writers in international law.

"(b) To strike at the independence of the judiciary (Cf. Bnrrromeo vs. Mariano, 41 Phil., 332) ;

"(c) To contravene the principles underlying' the creation of collegiate courts;

"(d) To encroach on the appointing and removal power of the President (Concepcion vs. Paredes, 42 Phil., 590) ;

"(e) To subject this respondent to the risk that his trial would be without due process of law."

In the case for treason against Pedro Santos Balingit, the accused was convicted in the decision penned by Judge Veluz and concurred in by Judge Abad Santos, Judge Lopez dissenting and voting to acquit the accused. Both the majority and minority opinions are presented as an annex of the memorandum of counsel for the petitioner.

The first legal problem arising out of this controversy is the determination of whether, upon the facts alleged in the petition and appearing in the annexes on record, Judge Eusebio M. Lopez is disqualified from sitting and participating in any manner in the hearing, consideration and decision of the treason cases against Benigno S. Aquino (No. 3527), Antonio de las Alas (No. 3531), and of other criminal cases of the same nature pending before the Second Division of the People's Court or in any other division where respondent judge may hereafter be assigned.

This legal problem depends for its solution on the existence of (a) an applicable provision of law, or (6) an applicable provision of a judicial rule, or (c) a recognized legal principle governing the matter based on reason and justice.

We have painstakingly scanned the voluminous pleadings and memoranda presented by the parties and there no other provision of law has been invoked or cited in support of the theory of respondent judge's disqualification except section 7 of Commonwealth Act No. 682. At the hearing and re-hearing of this case, we propounded questions to appearing counsel for any other applicable provision. The answers given failed to satisfy our curiosity. None other was mentioned or hinted.

The pertinent part of section 7 of Commonwealth Act No. 682 is as follows:

"No judge of the People's Court may disqualify himself or be disqualified except in "accordance with the provisions of existing¹ laws or where the accused in a case have intervened in any previous appointment of the judge to any position in the government service."

The above provision is composed of two parts, one, general, which makes applicable "the provisions of existing laws," and the other, specific, where the affected judge had been previously appointed to any government position through the intervention of the accused.

The last specific provision does not apply to Judge Lopez, as nobody alleged that any of the accused in the treason cases in question had any part in the previous appointment of said judge to any position in the government service. What remains to be determined are what "provisions of existing laws" are referred to in the above-quoted provision.

Counsel for the petitioner offered a ready answer by pointing only to section 1 of Rule 124, which provides as follows:

"Courts of justice shall be always open, except on legal holidays, for the filing of any pleading or other proper papers, for the trial of cases, and for the issuance of orders or rendition of judgments. Justice shall be impartially administered without unnecessary delay."

By narrowing the subject of inquiry, the specific provision upon which Judge Lopez is intended to be disqualified is the one expressed in the following words: "Justice shall be impartially administered."

Counsel's enthymeme runs as follows: "Judge Lopez cannot administer justice impartially; therefore, he is disqualified." But the assumed major premise, which if expressly stated would complete the syllogism, finds no

support at all in the invoked reglementary provision. There is absolutely nothing in said provision or in any part of section 1, Rule 124, in support of the thesis that, because a judge cannot administer justice impartially (the minor premise of the syllogism which is yet to be determined), ipso facto he is disqualified.

The question of disqualifying a judge from participating in the disposal of cases under the jurisdiction of his tribunal is a matter of grave import to be governed by more or less reasonable deductions which any one may freely take from so general and broad proposition that "justice shall be administered impartially."

As that proposition embodies the fundamental aim of a system of justice, if we should follow the way of reasoning of counsel for the petitioner, all legal and reglementary provisions intended to attain that fundamental aim can be dispensed with as superfluous. All purposes and objectives of a system of justice may be summed up in the compliance of the general mandate that "justice shall be impartially administered." But as every one has his own individual ideas, plans, and methods of complying with said mandatory provision, and within its intellectual scope any one may logically give free reign to his imaginations, troubles and conflicts will never find their end. Specific rules were adopted to avoid the existence of such a confusing and chaotic situation.

That the authors of the judicial rules, in enacting section 1 of Rule 124, did not have in mind the idea of disqualification of judges, is shown by two conclusive evidences, one negative and the other affirmative.

The negative evidence is offered by the title of Rule 124 which says: "Powers and Duties of Courts and Judicial Officers." Each and everyone of the nine sections of the rule do not include nor hint the idea of disqualification. To prove it, it would be enough to read their titles: "Section 1. Courts always open; how justice administered.—Section 2. Publicity of proceedings and records.—Section 3. Process of superior courts enforced throughout the Philippines.—Section 4. Process of inferior courts.—Section 5. Inherent powers of courts.—Section 6. Means to carry jurisdiction into effect.—Section 7. Trials and hearings; orders in chambers.—Section 8. Interlocutory orders out of province.—Section 9. Signing judgments out of province." The legal maxim that "inclusio unius exclusio alterius" is perfectly applicable in this case.

The affirmative evidence is offered by Rule 126 which is entitled: "Disqualification of Judicial Officers." This rule is composed of only two sections as follows:

"SECTION 1. Disqualification of judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of the Civil Law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"SEC. 2. Objection that judge disqualified, how made and effect.— If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case."

There is no question that the above provisions are not applicable in the case of Judge Lopez. Counsel for the petitioner themselves never pretended that the case of Judge Lopez falls under any of the two above sections of Rule 126.

Assuming hypothetically that, by his several opinions mentioned in the petition, Judge Lopez has shown that he

cannot administer justice impartially in the treason cases in question, if he cannot be disqualified under Rule 124 or 126 or under any other legal provision, what relief can be afforded to the impending miscarriage of justice which will result by allowing him to continue participating in the disposal of said treason cases? We regret that in this case we are not called upon to answer the question. If there is any legislative deficiency, whether due to lack of foresight of lawmakers or lack of perspicacity of the Supreme Court as a rule-making body, that deficiency is now beyond our power to correct.

But the problem presented is not irretrievably without solution under the present rules. Rule 129, which provides for the procedure to be followed upon the filing of complaints for serious misconduct or inefficiency of judges of first instance or Justices of the Court of Appeals, is among those applicable to the People's Court by express provision of section 22 of Commonwealth Act No. 682. Rule 129 has been enacted in consonance with section 9 of Article VIII of the Constitution which provides: "The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of 70 years, or become incapacitated to discharge the duties of their office." The fact that a judge may not administer justice impartially, whether his partiality may be considered as a serious misbehavior or is a condition which may incapacitate him to discharge the duties of his office, to preclude him from causing any harm to the administration of justice, the proper procedure is not to disqualify him but to file the complaint contemplated by Rule 129, and the procedure will certainly be more speedy and effective. If there is an imminent danger to the proper administration of justice if the affected judge is allowed to continue in the discharge of his duties, after proper showing, he can be immediately suspended, and in support of the propriety and justice of such action the annals of the Supreme Court is certainly not lacking in precedent.

Furthermore, the procedure will be straightforward and more in consonance with the true spirit of a proper administration of justice, which cannot thrive in a climate dominated by indirect and devious ways. The procedure for disqualification against Judge Lopez, in case it would prosper, would create a situation undoubtedly not exhilarating to those who have a high regard for public interest. It will be the situation of a judge who, notwithstanding continuing to hold his official position, with the prestige and dignity, emoluments and privileges which it carries, is kept idle, not permitted to perform his official duties in many important cases, practically a public ward of the government. The disqualification would constitute, in effect, a removal from office, without the benefit nor the opportunity for the removed judge to defend himself in the proper administrative impeachment proceedings, and will give way to a means of circumventing the constitutional provision which guarantees the stability of judges with the concomitant independence of the judiciary.

No applicable legal or reglementary provision having been pointed out in support of the move to disqualify Judge Lopez, the next legal problem is to find out if there is a recognized legal principle which may supply their absence.

Counsel for the petitioner invoked the decision of the Supreme Court in the case of *Jurado & Co. vs. Hongkong and Shanghai Banking Corporation*, rendered on October 10, 1902 (1 Phil., 395, 396).

Said decision outlines the procedure to be followed in case a member of the Supreme Court is challenged to sit therein in the disposal of a given case, the outline being an attempt of interpretation of the second paragraph of section 8 of the former Code of Civil Procedure.

The opinion of the Court in said case, penned by Mr. Justice Willard, contains what follows:

"The application of article 8 of the Code of Civil Procedure, now in force, to a challenge directed to the competency of a judge of the Court of First Instance is free from doubt. But when the challenge is to the competency of the judge of this court the article may admit of two constructions. Under one construction the

magistrate decides for himself the question of his competency; his decision is conclusive, and the other members of the court have no voice in it. Under the other construction the magistrate challenged sits with the court and the question is decided by it as a body.

"We adopt this second construction as the proper one. We can not admit as possible a third construction under which the court would decide the question, excluding from the consideration of it the members challenged. This construction would, if adopted, put it in the power of a party to stop all proceedings in the cause by challenging; three of the justices. The court has examined the original documents referred to at the argument, and we find nothing in them to support the challenge or which expresses an opinion on the merits of the case."

An analytical comparison between the above pronouncements and the provision of law intended to be interpreted will immediately show that the construction adopted runs counter to the spirit and the letter of the law.

For a conclusive evidence of what we say we quote here-under section 8 of the Code of Civil Procedure.

"SEC. 8. Disqualification of Judges.—No judge, magistrate, justice of the peace, assessor, referee, or presiding officer of any tribunal shall sit in any cause or proceeding in which he is pecuniarily interested, or related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of the civil law, nor in which he has been counsel, nor in which he has presided in any inferior judicature when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

"No challenge as to the competency of any of the officials named in this section shall be received or allowed; but if it be claimed that the official is disqualified by the provisions of this section, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay of action shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in his court."

The Court declared that the law admits of two constructions : 1. "The magistrate decides for himself the question of his competency; his decision is conclusive, and the other members of the Court have no voice in it;" and 2. "The magistrate challenged sits with the Court and the question is decided by it as a body." The Court rejected the first and accepted the second. This is erroneous.

The law provides that the party objecting to the competency of the Justice "may, in writing, file with the official his objection" and said official "shall thereupon proceed with the trial or withdraw therefrom in accordance with his determination of the question of his disqualification." It is clear that the challenge should be addressed exclusively to the challenged officer. It also admits no doubt that the same official is the only one who shall determine whether to proceed with the trial or withdraw therefrom. The determination of the question of his disqualification lies on his power alone.

There is no doubt in our mind that the first interpretation, rejected by the Court in the Jurado case, is the correct one. The challenge must be addressed to the allegedly disqualified Justice. The Justice decides for himself the question, and his decision is conclusive. The other members of the court have no voice in it.

The procedure is the same as outlined in section 2 of Rule 127, the one reproducing verbatim and superseding the second paragraph of section 8 of the Code of Civil Procedure.

The foregoing leads us to the conclusion that the decision in the Jurado & Co. case does not offer any legal principle in support of the theory of disqualification of Judge Lopez. It only offers an interpretation of section 8 of the former Code of Civil Procedure which, as has been shown, appears to be mistaken and, therefore, lacks any

binding or persuasive force. As a matter of fact, at the foot of the same decision appears the statement that the Chief Justice withdrew from the case, although it does not appear whether he is the one whose competency one of the parties has challenged. If he is the one challenged, the fact that he did not abide by the Court's decision declaring the challenge groundless, and no further action had been taken, is a conclusive evidence that no member of the court considered binding the collective opinion of the same, and that the ultimate determination and decision on the question whether a member of the court is or is not disqualified and should continue in the case or withdraw, rests exclusively in said member, and whatever action he may take is final.

The intervention of the court is merely advisory in nature. The challenged Justice may or may not submit the question to the court. It all depends on his discretion. If he submits the question to the court, he is free to follow or not to follow the opinion of said body. The final result will be the same whether or not he submits the question to the court, as the last word will be his. Such happened in the case of Mr. Justice Briones when, feeling that he should desist from further taking part in the proceedings of the Supreme Court in view of the proposed resolution of impeachment filed in the House of Representatives, begged leave to refrain from further participation on September 10, 1946 (42 Off. Gaz., page 2156). The fact that he abided by the opinion of the court should not be interpreted as depriving him of the freedom of disregarding said opinion and acting with free volition in accordance with the dictates of his conscience.

Such also is the case of the Chief Justice and several Justices when they decided to withdraw from the cases of De la Rama (G. R. Nos. L-268 and L-982), Teofilo Sison (G. R. No. L-398), Aurelio Alvero (G. R. No. L-820), and several others, in accordance with their respective opinions regarding section 14 of Commonwealth Act No. 682.

Lastly, in this very same case the question as to whether the Chief Justice and six other Justices are disqualified or not has been considered and the Court, by majority vote, adopted the opinion that said several members are not disqualified and, therefore, should continue taking part in the disposal of this case. Of the five members who voted in support of the theory of disqualification, one, the Chief Justice, abided by the majority opinion and remained participating in the consideration of this case up to its final decision, while the remaining four, Mr. Justice Panis, Mr. Justice Briones, Mr. Justice Hontiveros and Mr. Justice Padilla, withdrew from the case. The court deemed it unnecessary to take further action on the matter. The above is a conclusive evidence of the fact that all the members of the Court, either expressly or impliedly, were, at the time the incident was considered and disposed of, unanimous in the opinion that the question of disqualification of any member of this Court rests exclusively in the power of said member to decide, and whatever his decision, is final and binding.

The decision in the case of *Dais vs. Torres and Ibañez* (57 Phil., 897-905) is pointed as a source for the missing principle, to find which in our search we may need the lantern of Diogenes. Upon the facts in the said case it clearly appears that the trial judge had shown in his decision evident bias and prejudice against one of the parties, an attorney, the mutual animosity and hostility between the judge and the lawyer arising from the fact that the lawyer filed with the Supreme Court a complaint for misbehavior, while a complaint for malpractice was also filed against the lawyer.

The Supreme Court found that the judge resented the attorney's filing of charges against him, leading to bias or prejudice, which is reflected in the judge's decision. This Court concluded that the judge could not be disqualified under section 8 of the Code of Civil Procedure, the provisions of which are reproduced in Rule 126, but suggested that the effects of said bias or prejudice could not be left without relief, the suggestion appearing in the following paragraph that we quote:

"Although a judge may not have been disqualified under said section, nevertheless if it appears to this court that the appellant was not given a fair and impartial trial because of the trial judge's bias or prejudice, this court will order a new trial, if it deems it necessary, in the interest of justice.

"It was said in *State vs. Board of Education* (19 Washington, 8; 67 A. S. R., 70(5, 713), that the principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is the popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals. Actions of courts which disregard this safeguard to litigants would more appropriately be termed the administration of injustice, and their proceedings would be as shocking to our private sense of justice as they would be injurious to the public interest. The learned and observant Lord Bacon well said that the virtue of a judge is seen in making inequality equal, that he may plant his judgment as upon even ground. Caesar demanded that his wife should not only be virtuous, but beyond suspicion; and the state should not be any less exacting with its judicial officers, in whose keeping are placed not only the financial interests, but the honor, the liberty, and the lives of its citizens, and it should see to it that the scales in which the rights of the citizen are weighed should be nicely balanced, for, as was well said by Judge Bronson in *People vs. Suffolk Common Pleas* (18 Wend., 550): 'Next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.' "

We will see that, while our study of the decision in the *Jurado* case gave a negative result in our investigation, the decision in the *Dais* case offers a positive result but in the reverse, because there it is unmistakably asserted that the biased judge may not be disqualified but a new trial is suggested as a remedy of the mistrial caused by the bias or prejudice of the judge.

The pronouncements in *Day vs. Day* (12 Idaho, 556; 86 Pac, 531) ; *Williams vs. Robinson* (6 Cush. [Mass.], 333) and in 33 C. J., section 129 B, quoted in the memorandum for the petitioner and in the opinion dated November 8, 1946, of Judges Veluz and Abad Santos granting the motion for the disqualification of Judge Lopez, besides the fact that it has not been shown that the opinions therein are based on identical or similar legal provisions in effect in the Philippines, failed to render any specific statement upon which a legal principle may be gathered in support of the move to disqualify Judge Lopez.

The lengthy memorandum for the petitioner fails to invoke better authorities.

On the other hand, in a line of decisions such as the ones rendered in *Joaquin vs. Barretto* (25 Phil., 281) ; *Clarke vs. Manila Candy Co.* (27 Phil., 310) ; *Perfecto vs. Contreras* (28 Phil., 538) ; *United States vs. Baluyot* (40 Phil., 89; *Benusa vs. Torres* (55 Phil., 737); *Dais vs. Torres and Ibañez* (57 Phil., 897); and *Artache vs. De la Rosa* (58 Phil., 589), this Court has consistently maintained the position that those mentioned in section 8 of the old Code of Civil Procedure, now Rule 126, are the only grounds recognized by law upon which a judge may disqualify himself or be disqualified.

If there is no law, rule, or legal principle upon which Judge Lopez may disqualify himself or be disqualified, it stands to logic that his colleagues in the Second Division of the People's Court, notwithstanding the fact that they constitute the majority, have no power, jurisdiction, or authority to disqualify Judge Lopez and, therefore, their decision or resolution granting the motion to disqualify the respondent judge is null and void per se. Even if there is any legal ground disqualifying Judge Lopez, which in the present case has not been shown, the power to decide the question of disqualification under Rule 126 resides in Judge Lopez's hands alone and not in any or both of his colleagues in his division or in the whole People's Court.

The procedure outlined by section 2 of Rule 126, which is no different from the one provided by section 8 of the former Code of Civil Procedure, is predicated on the purpose of protecting the judges who fall under the provisions of section 1 of Rule 126 from any misunderstanding as to their judicial actuations, but never under the assumption that because they are thus situated, they are incapable of rendering true justice. The rule for disqualification is rather directory than mandatory in nature. If judges falling under section 1 of Rule 126 feel that

they are not able to act with impartiality or, even if they can do so, their actuations may be misunderstood by the parties or the public in general, they are free to take advantage of the rule in order to abstain from taking cognizance of cases in which their competence is liable to be challenged. But if they are sure that they can render true justice and they are not afraid from the effects of any possible misunderstanding arising from their actuations, they are free to proceed. The authors of the rules knew from history and personal experience that antecedents or relations mentioned in section 1 of Rule 126 are not insurmountable obstacles for an impartial judgment. The fact that Peter the Great consented to the execution of his own son, Prince Alexis, because the latter happened to be balky and fled to a foreign country, is well-known to students of history. The fact that the prince died while being investigated in prison does not affect the impartiality of judgment shown by the dynamic personality that created modern Russia.

As a matter of principle, the idea of recognizing in the majority of a collegiate court the power to disqualify a member thereof is repugnant and destructive of the very nature of such court. The basic assumption behind the creation and existence of a collegiate tribunal is that it has to pass upon highly debatable juridical or factual issues and that, to obtain the wisest possible conclusion, full opportunity must be given for each side of a controversy to present and argue their contentions.

The decision rests in the hands of the majority, but the opposition or the minority must enjoy the same rights, prerogatives, freedom and opportunity as the majority to express their opinions and convictions. The majority have the authority to take action, by a right or wrong decision, but the minority must be granted the untrammelled expression of their views whether the latter are correct or mistaken. The essential characteristics of a collegiate tribunal are the same as those of a democracy, a government of free opinions. The freedom to express them being indispensable to guide the future to persist in following the wise footsteps of the past or to correct the mistakes and blunders which are always possible in the system of trial and error of all human society.

Freedom of expression of the minority will be empty words if the majority should wield the power to eliminate, obliterate or nullify the minority through the process of disqualification which, by its practical effects, is tantamount to removal or dismissal from office. To recognize in the majority of a collegiate court the power to disqualify a minority member thereof is to enthrone a tyrannical rule which, not because it is wielded by the majority, are exempted from cure of the abhorring evils and bathyal depravities characterizing all tyrannies.

Suppose the majority of the Second Division of the People's Court have the authority to disqualify Judge Lopez and it so happens that the remaining other judges of the People's Court share the views of Judge Lopez. No other judge of the People's Court may take the place of Judge Lopez, and if substitution is to be made, the practical result will be the elimination of the other judges of the People's Court by a process of successive disqualifications which may be decreed by the majority of the Second Division. Suppose in another division the majority share the views of Judge Lopez and opine that the minority member, sharing the views of Judges Veluz and Abad Santos, is disqualified. Then that other division may eliminate by a process of successive disqualifications the judges sharing the views of said minority member. The practical effect is to create a situation in which all the fifteen judges of the People's Court will stand disqualified by reciprocal disqualifications. The resulting chaos and anarchy will be a ludicrous spectacle in the administration of justice. Of course, the parties—the prosecution and defense—should not be expected to remain idle, and where there is a minority member that they feel, rightly or wrongly, antagonistic to their respective positions, they will seek from the majorities of their respective divisions the expected decree of disqualification.

The proposition that the majority of a division in the People's Court may disqualify a minority member nullifies the legislative intent in creating a corporate tribunal, which must function and act as a single unit, with the same legal singleness of an individual person. In the same way that a person, just because he happens to be shifting,

when deciding a highly controversial question, from one tentative decision to a contrary one, should not be expected to have a surgeon sever a portion of his brains in order to attain a singleness of decision, a collegiate court should not be expected to sever one of their members so as to secure unity of opinion. To entertain such an idea is to adhere to Fascist, Nazi or any other totalitarian ideology.

In a collegiate tribunal conflicting views are to be expected. The drafters of our Constitution had such an expectation. They acted upon the basic assumption that a corporate body may often be divided on questions submitted to their decision and in order to guarantee the freedom of expression of the minority, they inserted in our fundamental law the provision that "any Justice dissenting from a decision shall state the reasons for his dissent," (section 11, Article VIII of the Constitution), and that mandate is binding for the minority to comply with and for the majority to respect.

Conflict of views are only natural in any group of persons, in the same way that collision of ideas is unavoidable in the mind of any single individual. Contrary promptings are constantly exerting their pressure in his conscience. Good and evil, noble and ignoble, lofty and base, generous and selfish, far-sighted and narrow-minded, are only sketchy predicates of the unbounded sphere of conflicting ideas which are bombarding each other in the synchrotron and cyclotron on his brains. In that mental cosmos, ideas are scattered and mingled, like stars, planets and asteroids in the firmament, and there also work as shooting meteors opposite feelings and passions—love and hate, generosity and ingratitude, magnanimity and meanness, courage and fear, cruelty and tenderness. Thus man very often is placed in an intellectual, moral or spiritual crossroad, where he has to endure the pangs of doubt and the excruciating anxiety for the choice that may happen to be wrong. Mental and moral conflicts that often place a man in an agonizing uncertainty are to be multiplied by the number of individuals composing a collegiate tribunal, and then we will see how absurd it is to expect unity or singleness of opinion therein.

There cannot be any question that the reglementary mandate that "justice shall be impartially administered", implies that those who are called to administer it must act freely from all the factors that may impair their impartiality. Bias is one of them. It deprives the person shackled by it of the opportunity to have a clear view of the pending issue so as to form a sound judgment and of the freedom of choice between right and wrong in a given litigation.

However, not all bias is harmful. No judge is required to be free from all kinds of prejudice. To make that requirement is to attempt an impossibility. No son of woman is free from all prejudice. It is impossible to find a person who can be absolutely impartial on every-thing. All judges have their prejudices. Each and everyone of the members of the Supreme Court entertains some kind of prejudice, whether political, moral, religious, artistic, economic, legal, or otherwise. Each one of us is the child of our past personal experience, surroundings, education, training, associations, and each one of these tends to create some kind of prejudice. It is hard to set a dividing line between harmless and harmful prejudices. Each case ought to be considered according to the circumstances surrounding it. In the present case there are strong indications to the effect that Judge Lopez entertains prejudices that deprive him the freedom of choice essential for him to render impartial and sound judgment in the treason cases against Benigno S. Aquino, Antonio de las Alas, and others similarly situated.

The statements he made in his concurring opinion in the Francisco case and in other opinions show that he is placed in a position that he is unable to render judgment but, only for acquittal of no small group of those indicted for treason.

The People's Court has been created by Congress to try those accused of treason and other crimes or offenses against national security committed during the Japanese occupation. , In enacting the law, Congress took for

granted that the provisions of the Revised Penal Code punishment treason and other offenses against national security are valid during said occupation and therefore enforceable. Judge Lopez entertains a contrary view. When he accepted the position as an associate judge of the People's Court it should be assumed that he accepted it with the full knowledge that it was his duty to enforce the provisions of the Revised Penal Code for which the People's Court was created. The fact that, notwithstanding his opinion that the provisions of law in question are not enforceable against the accused, he accepted the position, depicts a bias in favor of said accused.

But the fact alone that Judge Lopez entertained harmful bias, depriving him of the freedom of choice needed to administer justice impartially, does not authorize anybody to disqualify him without any legal provision to support his disqualification. Ours is a government of laws. Under our system, the law is supreme.

While it is the duty of Judge Lopez to administer justice impartially and he will be accountable if his failure to do so amounts to a serious misbehavior, yet nobody is authorized to supply by his own will the absence of a provision of law, just to disqualify said judge. Such an attempt is violative of the principle of independence of the judiciary, and is corrosive of the fundamental principles upon which is premised our constitutional system of democracy.

"Far more convincing than precedent or argument are great and basic principles long inherent in popular government intended to create an independent judiciary. A history of the struggle for a fearless and an incorruptible judiciary, prepared to follow the law and to administer it regardless of consequences, can be perused with ever-recurring benefit. Since the early days of the Republic, the judicial system in the United States, with certain exceptions which only served to demonstrate more fully the excellence of the whole, has been viewed with pride, and confidently relied upon for justice by the American people. The American people considered it necessary 'that there should be a judiciary endowed with substantial and independent powers and secure against all corrupting or perverting influences; secure, also, against the arbitrary authority of the administrative heads of the government.' (Woodrow Wilson, *Constitutional Government in the United States*, pp. 17, 142.) It was such a conception of an independent judiciary which was Instituted in the Philippines by the American administration and which has since served as one of the chief glories of the government and one of the most priceless heritages of the Filipino people.

* * * * *

"Although much more reluctantly, and also much more infrequently we are happy to add, the court has had to defend the judiciary against legislative and executive encroachment. (*Ocampo vs. Cabañgis* [1910], 15 Phil., 626; *In re Guariña* [1914], 24 Phil., 37; *Barrameda vs. Moir* [1913], 25 Phil., 44; and *Province of Tarlac vs. Gale* [1913], 26 Phil., 338.) As an instance of the latter class of decisions, in *Province of Tarlac vs. Gale*, supra, Mr. Justice Moreland, speaking for the court, said:

" 'The judiciary is one of the coordinate branches of the Government. (*Forbes vs. Chuoco Tiaco*, 16 Phil., 534; *United States vs. Bull*, 15 Phil., 7.) Its preservation in its integrity and effectiveness is necessary to the present form of Government. * * * It is clear * * * that each department is bound to preserve its own existence if it live up to the duty imposed upon it as one of the coordinate branches of the government. Whatever a person or entity ought to do or must do in law, it has the power to do. This being true, the judiciary has the power to maintain its existence; and whatever is reasonably necessary to that end, courts may do or order done. But the right to live, if that is all there is of it, is a very small matter. The mere right to breathe does not satisfy ambition or produce results. Therefore, courts have not only the power to maintain their life, but they have also the power to make that existence effective for the purpose for which the judiciary was created. They can, by appropriate means, do all things necessary to preserve and maintain every quality needful to make the judiciary an effective institution of Government. Courts have, therefore, inherent power to preserve their integrity, maintain their dignity and to insure effectiveness in the administration of justice. This is clear; for, if the judiciary may be deprived of any one of its essential attributes, or if any one of them may be seriously weakened by the act of any person or official, then independence disappears and subordination begins. The

power to interfere is the power to control, and the power to control is the power to abrogate. The sovereign power has given life to the judiciary and nothing less than the sovereign power can take it away or render it useless. The power to withhold from the courts anything really essential for the administration of justice is the power to control and ultimately to destroy the efficiency of the judiciary. Courts cannot, under their duty to their creator, the sovereign power, permit themselves to be subordinated to any person or official to which their creator did not itself subordinate them.'

"A stirring plea has been made by the learned representative of the Government for a decision which will work for the public welfare. We agree that, under the peculiar conditions existing in the Philippines, it is sometimes well for a judge not to remain indefinitely in a particular district. But it is a far cry from this premise to the use of a method not sanctioned by existing law and savoring of military discipline. Our conception of good judges has been, and is, of men who have a mastery of the principles of law, who discharge their duties in accordance with law, who are permitted to perform the duties of the office undeterred by outside influence, and who are independent and self-respecting human units in a judicial system equal and coordinate to the other two departments of government. We are pleased to think of judges as of the type of the erudite Coke who, three centuries ago, was removed from office because when asked if in the future he would delay a case at the King's order,' replied: 'I will do what becomes me as a judge.'" (Borromeo vs. Mariano, 41 Phil., 322, 329-333.)

For all the foregoing, we conclude:

1. That in his opinions in the Guillermo B. Francisco case and other cases mentioned in the pleadings, Judge Lopez appears to entertain prejudices that will not permit him to render an impartial judgment in the treason cases against Benigno S. Aquino and Antonio de las Alas and other cases of similar nature.
2. That although in Rule 124 there is the mandate that "justice shall be administered impartially," there is nothing in said rule or in any other part of the Rules of Court that may support the theory that violation of the mandate is a ground to disqualify a judge, although if the violation should amount to a serious misconduct or incapacity to discharge the duties of his office, it shall be a good ground for a complaint in a proceeding to remove the judge in accordance with Rule 129 and section 9, Article VIII, of the Constitution.
3. That, much as we may desire to see the mandate of Rule 121 that "justice shall be administered impartially" to be a ground to disqualify and exclude from a case a judge whose bias will preclude him from taking an impartial view of the case, we cannot do so without declaring and decreeing the existence of a legal provision which, in fact, does not exist, a thing not permissible under and within the system of a government of laws, which is the one established by the Constitution.
4. That although the Supreme Court is empowered to amend the Rules of Court and it may amend it to include bias or prejudice among the grounds for disqualification of a judge, if it decides to introduce such an amendment so as to fill a legal void, it may not, nevertheless, apply the amendment to the case at bar without violating the constitutional prohibition against the enactment of ex post facto laws. (Sections 1 and 2, Article III, of the Constitution.)
5. That no grounds for disqualification of judges are recognized by law except those provided in section 1 of Rule 126 and in sections 7 and 14 of Commonwealth Act No. 682, and in case a judge is challenged to take cognizance of a case on any of said grounds, the procedure that should be followed is the one outlined in section 2 of Rule 126.
6. That the provisions of Rule 126 and of section 8 of the former Code of Civil Procedure which it superseded, and of sections 7 and 14 of Commonwealth Act No. 682, in so far as making effective the disqualification therein provided, are rather directory than mandatory in character, as they are predicated on the idea of giving judges who may fall within these provisions the right and opportunity to withdraw, in order to protect themselves from any

public misunderstanding in their actuations, but never on the idea that they are incapacitated to render justice.

7. That, although according to the procedure outlined by section 2 of Rule 126, the challenged judge is the only one empowered to decide the question whether or not he is disqualified to take cognizance of and decide a given case, any arbitrariness he may commit is not without remedy, because an appellate court may make corrections or order re-trial and, if arbitrariness should amount to serious misbehavior or show inefficiency or inability to properly discharge his official duties, the judge may be removed from office by the procedure outlined in Rule 129.

8. That prejudice or prejudices as the one shown by Judge Lopez are not among the grounds for disqualification mentioned in section 1 of Rule 126 and sections 7 and 14 of Commonwealth Act No. 682.

9. That the majority of the judges of the Second Division of the People's Court have no jurisdiction or power to act on the question whether Judge Lopez should or should not disqualify himself, and their opinion on said question has absolutely no legal effect, although, if sought by Judge Lopez himself, they may issue it in a merely advisory character.

10. That to disqualify Judge Lopez and, therefore, impede him from taking cognizance from one or more cases upon grounds not provided by law, is tantamount to his removal from office without due process of law and in open violation of the independence of the judiciary.

11. That the rule prevailing in the Supreme Court to the effect that each Justice is the sole judge on the question as to his disqualification to take cognizance of and participate in the decision of any given case, is the same that must be followed in all other collegiate courts.

12. That although the action of Judge Lopez in accepting a position in the People's Court, entrusted to enforce laws which he believes unenforceable and to pass judgment on the guilt or innocence of many accused whom he believed from the very beginning to be not guilty and hailed to be patriots or heroes, is not beyond reproach and may give the implication that he accepted the position to favor said accused, the drafters of the law creating the People's Court must have foreseen the possibility of such a situation when they created a collegiate tribunal as a means of avoiding possible miscarriage of justice through unipersonal judicial actuations.

13. That at the time Commonwealth Act No. 682 was enacted there were strong public feelings and prejudice as regards the conduct of those against whom informations were later filed with the People's Court and to avoid the evil effects that individual judges may be swayed one way or the other, by said feelings and prejudice, the system of collegiate court was adopted to guarantee a proper administration of justice, and the effectiveness of the device adopted is shown in the instant case in which the actuations of a prejudiced judge may be overruled by a majority who do not share the same prejudice, and the majority opinions in deciding a case are the decisions of the court.

14. That the petition in this case has no legal ground to stand on.

After this case was firstly heard and submitted for our decision, the Justices taking part were equally divided and no decision could be rendered; so we ordered a rehearing in accordance with section 2 of Rule 56 in relation with section 1 of Rule 58. Said section is as follows:

"Where the court in banc is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action shall be dismissed if originally commenced in the court; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied."

The case was submitted anew for deliberation and decision. The vote was 4 to 4. Again we have to apply section 2

of Rule 56, which only embodies a wise parliamentary rule, well-recognized in democracies.

The petition is denied.

BENGZON, J.:

I concur in the result. However, I must say that although Judge Lopez made some mistakes in the appreciation of facts judicially cognizable, he may not thereby be held to be biased against the prosecution.

TUASON, J., with whom concurs MORAN, C. J., concurring:

I concur in the result of Mr. Justice Perfecto's opinion and shall state briefly my reasons. I shall confine myself to the broad, fundamental principles of the case, leaving aside all niceties of legal interpretation.

It is well settled that "judges may be disqualified only for proper grounds; and, where the constitution or statutes enumerate such grounds no others will be recognized.

"In order that a judge may be disqualified, there must exist a ground authorized by law to disqualify him, and it is not for the courts to add other grounds of disqualification. * * *"

The Rules of Court which have the force of" law specify the grounds for disqualification of judges and judicial officers. Rule 126, section 1, reads:

"No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, computed according¹ to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record."

By reference and with the addition of one more ground, this provision was made a part of the People's Court Act, section 7, which says:

"No judge of the People's Court may disqualify himself or be disqualified except in accordance with the provisions of existing laws or where the accused in a case had intervened in any previous appointment of the Judge to any position in the government service."

The grounds thus enumerated in the Rules of Court must be deemed to exclude others under the principle we have cited and under the well-known canon of statutory construction, *inclusio unius est exclusio alterius*.

Bias or prejudice not based on any of the conditions named in the Rules of Court; previous rulings or opinions, or feelings of extreme delicacy do not constitute legal disqualification under existing legislation. The injunction in Rule 124, section 1 of the Rules of Court, that "justice shall be impartially administered without unnecessary delay", is but a declaration of a general principle innate and inherent in all judicial systems worthy of the name. Without this declaration the idea is embodied in the system. It is the very soul of the administration of justice; without it the workings of the courts would be an "administration of injustice." "The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals." (State vs. Seattle Bd. of

Education, 52 Pac, 317.)

The objection to Judge Lopez's qualification falls, in my opinion, entirely within the domain of conscience. It is a matter that Judge Lopez alone can decide according to the dictates of his sense of right and wrong. The propriety of a judge sitting in a case with his mind warped and bent towards one side or the other has much to answer for his partiality; but the remedy for the wrong, if the judge's determination and actuations should amount to a serious misconduct, must be sought in another direction. The fact that administrative proceedings are cumbersome and do not give ample redress to the aggrieved party, is no legal justification for making an exception to the law.

As the law stands, we can only express passive disapproval of Judge Lopez's action if it be true, as alleged, that he had a preconceived opinion that all the accused being prosecuted or to be prosecuted before the court or division of which he is a member are innocent and should be absolved. This would be no less true if his leaning happened to be on the side of the prosecution. That his opinion was inspired by an honest conviction of law and justice might mitigate but would not obliterate the inequity of his position. Its damaging effects would not be lessened by the sincerity of his conviction. His bias and partiality would be as shocking to our private sense of decency and as injurious to public interest and sentiments as they would if his motives were wicked.

At the risk of preaching platitudes we may call attention to the "things necessary to be had in remembrance by judges", among which are:

"That I suffer not myself to be prepossessed with any judgment at all, 'till the whole business and both parties be heard."

"That I never engage myself in the beginning of any cause, but reserve myself unprejudiced 'till the whole be heard.'" (Hale, Sir Matthew, History of the Common Law, 1792.)

It has been well pointed out that it is a matter of the highest moment, not only to the parties affected but to the public generally, that it might be said of every judge, however erroneous his decision might have been, that the fault did not have its origin in his personal attitude toward either of the litigants, or the cause of either of them, but was the result of an honest mistake after bringing to the case an unprejudiced mind and giving to its consideration the best judgment of which he is capable. (Petrey vs. Holliday, 199 S. W., 67.)

Above all, it is my decided opinion that the members of the People's Court sitting in division or in bane have no power to disqualify any of their colleagues. Carried to its logical conclusion, such power could lead to a disqualification of a judge by his colleagues, on good or frivolous grounds, in nil cases. In this manner the majority of the court could accomplish what would, for all practical purposes, be a suspension or removal, thereby nullifying the constitutional safeguards designed to protect the judge's tenure of office. More than this, the judge could be removed before he has committed any offense when, according to law, dismissal or discipline of a judge has to be founded on consummated serious misconduct.

Quite apart from these objections, the disqualification of a judge by other members of the court would be revolting to the dignity of a self-respecting member of the judiciary if not to the dignity of the court, of which he is an integral part, as well. Last but not least, the exercise of this power would tend to trammel the freedom of a judge to ex-press or entertain an opinion in opposition to that of the majority, thus impairing the independence of judgment which, like integrity, and used within proper bounds, is the first and highest quality needed in the members of a strong judiciary.

MORAN, C. J.:

I certify that in the consideration of this case eight Justices took part including one specially designated from the Court of Appeals, and that four of them voted for the dismissal of the petition and four for granting the same. Because of this tie, the petition shall be dismissed under Rule 56, section 2. The opinions for the dismissal are now filed in order to avoid further delay in the trial and disposition of cases in the People's Court, without prejudice to the subsequent filing of the contrary opinion or opinions of the other four Justices.

LIM, J.: Opinion for Granting Writ.

The People of the Philippines, through, the Solicitor General, filed this petition for prohibition against Eusebio M. Lopez, Associate Judge of the Second Division, of the People's Court, to make him desist from further proceedings in, or further exercising his jurisdiction in the trial of, and from otherwise taking further cognizance of criminal cases Nos. 3527 and 3531, People of the Philippines vs. Benigno S. Aquino, and People of the Philippines vs. Antonio de las Alas, respectively, and "other treason cases of the same nature" actually pending before the Second Division of the People's Court or in any other division where he may thereafter be assigned, and declaring him disqualified to sit therein.

Immediately after the prosecution had closed its main evidence in criminal case No. 3524, People's Court, entitled People of the Philippines vs. Guillermo B. Francisco, the defense counsel filed a motion to dismiss on the sole ground of insufficiency of evidence. On 15 August 1946, Associate Judges Salvador Abad Santos and Jose P. Veluz dismissed the case based on this alleged insufficiency of evidence (Annex D to petition).

On 25 September 1916, Judge Lopez published a concurring opinion, with this opening statement:

"The defendant is accused of treason for having occupied various important posts in the two puppet governments established by the Japanese army during the enemy occupation, having performed the various duties incumbent upon him as holder of the said posts, and for having delivered numerous speeches, allegedly treasonous, on various occasions, also during the occupation. Strictly speaking, the delivery of the said speeches did not constitute a part of his duties as occupant of the various posts he held, and I consider them his private acts, bearing no relation to his official character." (Annex E, p. 1, par. 1.)

and ended with the following remarks,

"The acts imputed to the accused, even if they had been proved, were acts within the legitimate powers of the enemy and not in contravention of the limitations upon his powers, and therefore not treasonous, and the accused should be acquitted. As this is the effect of the decision of the majority, I concur in the result." (Annex E, p. 37; italics supplied.)

In another portion, he announced his future action when he said:

"This case increases in importance if we consider the fact that it is inseparably linked with other cases of the same nature against other men whose activities played a most important part in the shaping of the fate and destiny of the people during the night of the nation's tragedy and martyrdom." (Annex E, p. 2.)

Instead of confining his discussion to the sufficiency of the evidence, which was the only issue raised in the motion for dismissal, Judge Lopez expressed personal ideologies, dislikes, prepossessions, and conclusions of fact, warranted by the evidence or the issue raised by the parties not necessary to the decision of the case, justifying unqualifiedly the aid and comfort given to the Empire of Japan by the "Filipino leaders" or the so-called political collaborators. These are a few samples:

"It is hard to believe that the Filipino leaders * * * accepted services under those two governments without compulsion or coercion." (Annex E, p. 2.)

"One thing was uppermost in their minds; the nation must 'survive * * *.'" (Annex E, p. 4.)

"They must feign cooperation * * *." (Annex E, p. 4.)

"They had the instructions of President Quezon to do so." (Annex E, p. a.)

"The Philippines paid heavily, perhaps too heavily, for the ill-advised and irresponsible guerrilla activities of her own sons." (Annex E, p. 7.)

"The leaders of the people surrendered and gave aid and comfort to the enemy because they knew that only by giving aid and comfort to the enemy could they hope to make the nation survive." (Annex E, p. 32.)

"Speeches alone, no matter how eloquent in praises of Japan's magnanimity and grandeur, are not sufficient to support conviction." (Annex E, p. 36.)

and that,

"They were shields to protect the people from the brutality of the enemy." (Annex E, p. 37.)

On 2 October 1946, in criminal case No. 3527, People's Court, *People vs. Aquino*, the plaintiff requested Judge Lopez to inhibit himself from participating in any manner in any decision of the case, and should he not do so, that an order be issued to that effect (Annex F, p. 5). This motion was premised on the allegation:

"That the Honorable Eusebio Lopez in his concurring opinion referred to above has shown a mental disposition and predisposition which is neither free, disinterested, impartial, nor independent, and the state cannot expect from him in the hearing and disposition of this case and other cases of similar nature that cold neutrality so essential in the proper administration of justice." (Annex F, p. 5. par. 9.)

Again, on 4 October 1946, in criminal case No. 3531, People's Court, *People vs. De las Alas*, the plaintiff also moved "that Hon. Judge Lopez should, through a written resolution, voluntarily disqualify himself in further proceedings of this case; and in the event that he does not willingly disqualify himself, that the second division issue an order ruling upon the present petition." (Annex G, p. 3.) This motion was likewise predicated on the bias and prejudice shown by Judge Lopez in the concurring opinion in *People vs. Francisco*, *ut supra*.

On 11 November 1946, the Second Division promulgated by majority vote identical resolutions disqualifying Judge Lopez from sitting in judgment in the above-mentioned criminal cases Nos. 3527 and 3581 and "other treason cases of the same nature pending before the People's Court" (Petition, par. IX, and Annex H). On the same date, Judge Lopez promulgated individually a dissenting resolution, pretending to deny the People's motion for his disqualification, upon reaffirmation of the beliefs, prepossessions, and conclusions he had expressed previously in his concurring opinion in *People vs. Francisco*, *ut supra*. Along with other expressions there are the following:

"My concurring opinion may read like a brief in favor of collaborators in general, but my opinions and conclusions therein discussed are based on law and on facts, which admit no dispute, and on the sense of justice which the circumstances of the occupation evoke for those who were victims of its tyranny and impositions and who are now, in my belief, being denied their rights and privileges under the Constitution-" (Annex I, pp. 8-9.)

"True, most of the facts I discussed in my concurring opinion were not proved during the trial, but they are matters of common knowledge and contemporary history." (Annex I, p. 11.) "The Filipino leaders surrendered to the enemy and accepted services in the two puppet governments because they had to and were coerced to do so." (Annex I, p. 11.)

"The cooperation the Filipinos gave to the Japanese army was feigned and not real." (Annex I, p. 11.)

"Prosecutors may now speak lightly of that tremendous brutal power that had the nation in its claws, but during the days of the occupation it was the greatest fact that completely dominated the actions of the people." (Annex I, p. 12.)

"The facts of which I have taken judicial cognizance are not controversial facts. They were not taken out of the mass of evidence presented by the parties in the heat of contest. They were matters of common knowledge and contemporary history, the truth and verity of which no Filipino, present in his country during the enemy occupation, can honestly dispute." (Annex I, p. 13.)

"President Quezon's instructions need special mention. It is said that they were the subject of debate in the Sison case. They were. I took judicial notice of them in the Francisco case, and I am of the opinion that I have violated no rule of evidence in doing so." (Annex I, p. 14.)

"The prosecution knows that the facts are engraved in the hearts of Filipinos and have left indelible traces of their presence all over the land. They can neither be changed nor modified. They have written their own conclusions in blood and tears, and, as general conclusions, they are immutable and changeless and cannot be evaded. They need only statement, and that was what I did in my concurring opinion." (Annex 1, p. 20.)

"In the Francisco case, my concurring opinion developed around the legal proposition that the acts imputed to the accused, even if they had been proved, were acts within the legitimate powers of the enemy and not in contravention of the limitations of his powers, Mini therefore, not treasonous, and the accused should be acquitted." (Annex I, p. 21.)

"In my concurring opinion I stated that it is cruel and inhuman to maintain the theory that the treason law of the Commonwealth was in full force and effect during the period of enemy occupation. This is not a biased and gratuitous opinion. I gave my reasons in its support. I consider the theory a vestige of a vindictive and primitive past. It places the citizen, bewildered, helpless, and abandoned, between the teeth of two conflicting penal laws: The Japanese law that considers non-cooperation a hostile act, punishable with death, and the law of his own country that makes him guilty of treason if he adheres and gives aid and comfort to the enemy. If to live under an alien military rule is purgatory, the theory of the prosecution makes it hell." (Annex I, pp. 22-23.)

"But the prosecution can rest assured that if I could be given the sole power to decide the cases against political collaborators and all other cases pending before the People's Court, I would dismiss every single one of them if the charges were limited to acts legal under the law of the occupant and not in contravention of the limitations upon the powers of the enemy established by international law." (Annex I, p. 24.)

"It is said that the State will not receive a fair and impartial hearing at my hands. The charge is unjust. The prosecution represents the State, but the prosecution is not the voice of the State. The State is fixed through its laws and the prosecution has no assurance that its interpretation of the law is the correct one, in its insistence to ignore the provisions of Article II, section 3, of the Constitution, it runs the risk of being declared irresponsible for having caused unnecessary suffering and humiliations upon thousands of innocent citizens by the too hasty initiation of thousands of treason cases without a previous comprehensive and thorough study of the law." (Annex 1, p. 25.)

"No treason law, however stiff and exacting and cruel, has ever made a country great. Cruelty breeds hatred, and can never be made the foundation of true greatness, whether of nations or of individuals. The strength of a country depends on the loyalty and devoted patriotism of its citizens, and the world has yet to find a treason law that will create patriots. Loyalty and patriotism cannot be imposed on anyone. They are natural flowers of the soul, horn out <>f love for native soil." (Annex I, p. 26.)

"I was moved by a sincere wish to help clear Philippine atmosphere of misunderstandings and of mutual charges and recriminations that have sprung out of the horrors of the war." (Annex I, p. 29.) (All italics

furnished for emphasis.)

On 13 January 1947 (although dated 11 December 1946— see memorandum for the prosecution, p. 33), in criminal case No. 89, People's Court, People of the Philippines vs. Pedro Santos Balingit, Judge Lopez wrote and promulgated a dissenting opinion against the majority decision convicting said Balingit of the crime of treason. This short but self-contained dissenting opinion reads fully as follows:

"The accused was taken from the Manila Police Force by the Japanese Military Police to help the latter in the apprehension of guerrillas. He helped in the arrest of some of the members of the Manila Police Force, his own companions and there are indications that it was his information that led to their arrest. His conduct, in this respect, is certainly reprehensible and immoral, even unpatriotic, but I am of the opinion that he cannot be convicted under article 114, of the Revised Penal Code because he acted in the performance of his duties under the law of the occupant, and, in so doing, had not violated any of the limitations upon the powers of the enemy imposed by international law." (Annex A, Memorandum for Petitioner, last page.)

On 31 January 1947, this Court promulgated its resolution of 30 January 1947, in Laurel vs. Misa (77 Phil., 856), denying the applicant's petition for habeas corpus, which was speculated on the theory of suspended sovereignty.

On 18 February 1947, Judge Lopez, in criminal case No. 822, People of the Philippines vs. Segundo Ubaldo, and notwithstanding our resolution in the Anastacio Laurel case, once more dissented orally against the decision of the Second Division of the People's Court, which found Ubaldo guilty of the crime of treason, for having adhered and given aid to the enemy. The majority of that court found that Ubaldo, while in command of about one hundred affiliates of the MAKAPILI, had captured seven Filipino civilians and thereafter turned them over to the Japanese Army, with instructions that they be beheaded, on the excuse that they were guerrillas (People's Petition of 21 February 1947, and its Annexes 1 and 2).

On 28 March 1947, Judge Lopez published his written dissenting opinion in the Ubaldo case, reiterating his previous stand in the Francisco (Annex E, p. 37), Aquino and De las Alas (Annex I, p. 24), and Balingit (Annex A, to Memo for Petitioner, last page) cases, and concluding that "the acts committed by the accused were legal under the existing law of the occupant and were not in violation of any of the recognized principles of international law." (Annex A, p. 1, to People's Petition of 29 March 1947.)

Three main issues stand out before this Court: First, is there a ground for the disqualification of Judge Lopez? Second, can the Second Division of the People's Court disqualify him? And, Third, is this petition for prohibition proper and adequate? We are not called upon to pass upon the correctness or legality of his personal views and beliefs.

The petitioner contends that Judge Lopez is disqualified under the terms of section 7 of Commonwealth Act No. 682, which in its pertinent portion partially provides:

"No judge of the People's Court may disqualify himself or be disqualified except in accordance with the provisions of existing laws or where the accused in a case have intervened in any previous appointment of the judge to any position in the government service."

in relation with Rule 124, section 1, Rules of Court, which expressly and categorically enunciates that

" * * * Justice shall be impartially administered without unnecessary delay."

Section 7 of Commonwealth Act No. 682 provides that the grounds for disqualification of a Judge of the People's Court are those contained in "the provisions of existing laws" or "where the accused in a case had intervened in a previous appointment of a Judge to any position in the government service." If the Congress, in referring to existing laws", meant exclusively the grounds of disqualifications contained in Rule 126, section 1, it would have

been far easier to have mentioned the same specifically, instead of resorting to a general phrase. The Congress must have borne in mind that aside from the enumeration in Rule 126 there were other legal grounds, such as those included under Rule 124, section 1.

It may be added that on 1 August 1946, the Department of Justice issued its Administrative Order No. 162, otherwise known as the "Canons of Judicial Ethics". It was Adopted with the explicit approval of the People's Court and promulgated advisedly for the use of such and other inferior courts. This is a local adaptation of the Canons of Judicial Ethics adopted previously by the American Bar Association. It stressed repeatedly on an impartial administration of justice (secs. 2, 4, 12, 14).

A cursory review of the different statements of Judge Lopez leads conditionally that he is obstinately opinionated and dogmatically biased and prejudiced not only against the special prosecutors, as signified most emphatically in Ins concurring opinion in the Francisco case and reaffirmed in more contemptuous terms in his dissenting statements against the resolutions of the Second Division of the People's Court disqualifying him from sitting not only in the Aquino and De las Alas cases but also in other treason cases of similar nature. His aggressive and defiant remarks patently evince a condition and propensity of the mind that renders Judge Lopez incapable of exercising his functions fairly and impartially towards one of the parties. He discloses not only a mere leaning to one side of the fundamental issues but he demotes even ill-feeling and animosity towards the, prosecution; these are sentiments and inclinations inconsistent with that state of mind that should be fully open to the conviction which evidence nun-produce, which is an essential and necessary attribute in order that a judge may be able to exercise his judicial functions fairly and impartially. His reiterated and persistent conduct as an opiniater inclined to prepossessed favoritism towards the persons accused before the People's Court paralyzes all empirical surmises and peradventures as to his unchangeable opinion in the other treason cases pending before him. His beliefs and prepossessions have gone beyond the bounds of mere probabilities. Glaring and unmistakable patterns of the fixity of his determination to dismiss all collaboration cases are furnished by his dissenting opinions in the Balingit and Ubaldo cases. The facts and the evidence established beyond peradventure treasonous acts yet he voted for the acquittal of the accused in both, cases, with the peculiarity that this dissent in the second case was verbally announced, written and published close upon the resolution of this Court rejecting unconditionally the theory of suspended sovereignty asserted in the Anastacio Laurel case.

Mr. Justice Perfecto has admitted that,

"In the present case there are strong indications to the effect that Judge Lopez entertains prejudices that deprive him the freedom of choice essential for him to render impartial and sound judgment in the treason cases against Benigno S. Aquino, Antonio de las Alas, and others similarly situated." (Opinion of Justice Perfecto, p. 312, ante.)

He further added:

"The statements he made in his concurring opinion in the Francisco case and in other opinions show that he is placed in a position that he is unable to render judgment but only for acquittal of no small group of those indicted for treason." (Idem, p. 312, ante.)

Another learned member of this Court, who concurred with the preceding one, had made these remarkable comments on the respondent Judge:

"As the law stands, we can only express passive disapproval of Judge Lopez's action if it be true, as alleged, that he had a pre-conceived opinion that all the accused being' prosecuted or to be prosecuted before the court or division of which he is a member are innocent and should be absolved. This would be no less true if his leaning happened to be on the side of the prosecution. That his opinion was inspired by an honest conviction of

law and justice might mitigate but would not obliterate the inequity of his position. Its damaging effects would not be lessened by the sincerity of his conviction. His bias and partiality would be as shocking to our private sense of decency and as injurious to public interest and sentiments as they would if his motives were wicked." (Concurring opinion of Justice Tuason, pp. 320, 321, ante.)

Speaking of Judge Lopez' duties and unnamed conduct when he accepted his position in the People's Court, the Justice first designated pointedly remarked:

"The People's Court has been created by Congress to try those accused of treason and other crimes or offenses against national security committed during the Japanese occupation. In enacting the law, Congress took for granted that the provisions of the Revised Penal Code punishing treason and other offenses against national security are valid during said occupation and therefore enforceable. Judge Lopez entertains a contrary view. When he accepted the position as an associate judge of the People's Court it should be assumed that he accepted it with full knowledge that it was his duty to enforce the provisions of the Revised Penal Code for which the People's Court was created. The fact that, notwithstanding his opinion that the provisions of law in question are not enforceable against the accused, he accepted the position, depicts a bias in favor of the accused." (Opinion of Justice Perfecto, p. 312, ante.)

In finding that it was not possible for Judge Lopez to try the case before him without prejudice, we pause in all fairness to disclaim the remotest reflection on the motives of the able and learned respondent. The attitude may well be ascribed to the righteous aspirations of an honest and conservative judge to attain independence and to form judgments promoted by what he conceived to be unjust and unwarranted prosecution of the Filipino leaders, whom he considered not only to be heroes but had acted under duress, without any other aim except the safety of the country.

Although there exists a virtual unanimity of opinions that Judge Lopez in the instances under consideration acted with bias and prejudice and in favor of the political collaborators, at least, and that he has openly announced his determination to vote in favor of the latter in all future cases in which he may have to intervene, it is adduced, nevertheless, that said bias and prejudice are not grounds for disqualification in this jurisdiction, inasmuch as the enumeration in Rule 126, section 1, Rules of Court, is exclusive. *Inclusio unius exclusio est alterius*. This proposition finds no basis either in law or in judicial precedents.

True enough, Rule 126, section 1, enumerates the grounds under which a judge may be disqualified. True enough, too, the concurrence of the grounds therein indicated does not ipso facto render the decision of the judge null and void, even though he has rejected previously a petition seeking his disqualification. It is of historical knowledge that a great number of judges have rendered judgments, oftentimes too severe, when they concern their own kin; their sense of justice was stronger than their human likings, attachments and passions. The same will not hold when it is patent, as it is in this case, that a judge had taken a previous stand that will make his subsequent judgment unavoidably partial and biased.

The dispositive portion of the decision of this Court in the case of *Dais vs. Torres and Ibañez* (57 Phil., 897), in which a new trial was ordered before "another judge", palpably because the respondent judge was biased or prejudiced, leaves no other alternative. Judicial precedents are to be drawn not on mere dicta but on the dispositive portions of the decisions that embody the actual adjudication of the case. If bias and prejudice are not grounds for disqualification of a judge, why it is that a "new trial" was ordered before "another judge"? This Court stated in that case:

"It was said in *State vs. Board of Education* (19 Washington, 8; 67 A. S. E., 706, 713), that the principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea,

running through and pervading the whole system of judicature, and it is the popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals. Actions of courts which disregard this safeguard to litigants would more appropriately be termed the administration of injustice, and their proceeding would be as shocking to our private sense of justice as they would be injurious to the public interest. The learned and observant Lord Bacon well said that the virtue of a judge is seen in making inequality equal, that he may plant his judgment as upon even ground. Caesar demanded that his wife should not only be virtuous, but beyond suspicion; and the State should not be any less exacting with its judicial officers, in whose keeping are placed not only the financial interests, but the honor, the liberty, and the lives of its citizens, and it should see to it that the scales in which the rights of the citizen are weighed should be nicely balanced, for, as was well said by Judge Bronson in *People vs. Suffolk Common Pleas* (18 Wend., 550): 'Next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge.'" (Italics furnished.)

This decision in the *Dais vs. Torres and Ibañez* case pronounces in unmistakable terms the universal proposition that "impartiality" is an essential and primary condition in the administration of justice: otherwise, a "new trial" would not have been ordered before "another judge", predicated on the grounds of bias and prejudice not enumerated in section 8 of the old Code of Civil Procedure (Act No. 190).

This court could not have held a different conclusion in the light of the provisions of either section 8 of the old Code of Civil Procedure or under section 1 of Rule 126, quite apart from section 1 of Rule 124. The reason that financial interests or mere relationship to a litigant is held to be sufficient to recuse a judge is that it is to be presumed that self-interest or natural affection will unconsciously prejudice a judge, and deprive the litigant of a fair trial. This presumption in certain cases may or may not be justified by the truth, but so solicitous is the law to maintain inviolate the principle that every litigant should be secure in his right to a fair trial, that he is accorded the benefit of the presumption. But, what does a presumption amount compared with the admitted fact that the judge will not accord the State a fair trial,—that he will vote to acquit the accused, no matter what the evidence may be? To compel a litigant to submit to a judge who has already confessedly prejudged him, and who is candid enough to announce his decision in advance, and insists that he will adhere to it, no matter what the evidence may be, should be so farcical and manifestly wrong, that it seems to us that the idea must necessarily be excluded by the very expression "administration of justice."

Fundamentally, bias and prejudice lies at the very root of the provision of said Rule 126. In fact, if the rule did not presume the existence of bias or prejudice in the peculiar relations therein referred to, namely, kinship, pecuniary interest, former relation with the case as counsel, etc., the inhibition therein established would not have been inserted therein. Such presumed bias or prejudice constitutes the very reason for the provision. Otherwise stated, if the rule-making power could only foresee that no judge who found himself in any one of those peculiar relations would be swayed thereby or would act with bias or prejudice, the rule would not have been promulgated. Indeed, the rule itself recognizes the possibility of the presumption not coming true in conferring upon the judge, under certain circumstances, the power to decide against his own disqualification and admitting the possibility of such decision being affirmed on appeal. And yet it is said on all sides that where any of those peculiar relations exists, disqualification follows.

It is elementary that this Court has at no time passed upon the full extent and true meaning of the principles contained in Rule 124, section 1, Rules of Court, which was partially extracted from section 1 of Act No. 136, of the former Philippines Commission. They are neither unique nor exclusive of this jurisdiction. They find a parallel in Article 1, section 18, of the Constitution of Idaho, which reads as follows:

"ARTICLE I, SEC. 18. Justice to be freely and speedily administered.—Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character, and right and justice

shall be administered without sale, denial, delay or prejudice."

In the case of *Day vs. Day* (12 Idaho, 556), the Supreme Court of the State of Idaho held that under these constitutional provisions the courts of said State are commanded to administer justice without prejudice, and, in view thereof, a judge may be disqualified on said ground, independently of the provisions of section 3900 of the Revised Statutes of 1897, providing for the same grounds of disqualification enumerated in our Rule 126. It is axiomatic that American and common laws are not binding on our courts, unless founded on sound principles applicable to local conditions, and are not in conflict with existing law (*U. S. vs. Cuna*, 12 Phil., 241; *Arnedo vs. Llorente and Liongson*, 18 Phil., 257; *U. S. vs. Abiog and Abiog*, 37 Phil., 137), but in case of doubt as to which construction should be given that which best promotes public policy must be applied (*Rubi vs. Provincial Board of Mindoro*, 39 Phil., 660).

The denial of this petition for a writ of prohibition, on the assumption that an appeal lies against an absolutory decision of Judge Lopez, based on his bias and prejudice, will result in an unnecessary and injurious delay. This would be another violation of Rule 124. If this dubious appeal succeeds, the case will have to be retried, subject to all eventual incidents and defenses, such as double jeopardy, loss of witnesses, lapse of memory, etc.

Notice the mandatory character of Rule 121, section 1, when it enjoins that "justice SHALL be impartially administered without unnecessary delay"; it is mandatory, even without the use of the verb "shall", for the injunction permeates the essence of the thing to be performed. A mandatory statute may be defined as one whose provision if not complied with will render the procedure to which it related illegal and void (*Barnett vs. Prairie Oil & Gas Co.*, 19 Fed. [2d], 504; *Quachita Power Company vs. Donaghey*, 106 Ark., 48; 152 S. W., 1012; *People vs. Graham*, 267 111., 426; 109 N. E., 699; *Bowen vs. Minneapolis*, 17 Minn., 115; 49 N. W., 683; *Enid vs. Champlin Ref. Co.*, 112 Okla., 168; 210 Pac., 604; *Beibert vs. Rhodes*, 291 Pa., 550; 140 Atl., 515; *Stiner vs. Powels Hwd. Co.*, 168 Tenn., 99; 75 S. W. [2d], 406). As it is mandatory in character, it is also self-executory.

There is no legislative deficiency nor lack of foresight of our lawmakers nor oversight on the part of this Court when the Rules of Court were originally promulgated. The law and the principle exist, and they should be applied un-hesitatingly to the present situation, unless we prefer to forego all the principles we have carefully and consistently enunciated and confirmed in the past, when we were called to interpret other legal provisions. Our Rules of Court "shall be liberally construed in order to promote their object and to assist the parties in obtaining a just, speedy and inexpensive determination of every action and proceeding" (Rule 1, section 1, Rules of Court).

The cardinal rule of statutory construction requires the court to give effect to the general legislative intent if that can be discovered within the four corners of the Act (*Borromeo vs. Mariano*, 41 Phil, 322), and when the language of a particular section of a statute admits of more than one construction, that construction should be adopted which tends to give effect to the manifest purposes sought to be obtained by the legislators; and a construction should be rejected which would defeat or strongly tend to defeat, the intention of the legislator as expressed in other sections of the same statute (*U. S. vs. Navarro*, 19 Phil., 134).

Our legislators and this Court have provided in common that there must be an "impartial administration of justice" (Act No. 136, section 1, and Rule 124, sec. 1, Rules of Court). To pretend that this Court is powerless to enforce this legal injunction and can not disqualify a judge who knowingly will render an impartial justice will taunt the intelligence of our legislators and even of the members of this Court, who have provided for the disqualification of judges on causes less serious than bias and prejudice, namely, for the grounds' enumerated in section 1 of Rule 126, which were based on existing or previous interest or relationship between such judges and the parties.

An interpretation that section 1 of Rule 124 is a simple affirmation of a general proposition, and that it is inapplicable and unenforceable for lack of implementation, defeats the philosophy and the fundamental objective

of the constitutional provision vesting the rule-making power on the Supreme Court (Art. VIII, sec. 13, Constitution), by which the administration of justice is entrusted almost exclusively on the Judiciary, with the reservation to the Congress of certain amendatory powers, as part and parcel of the mutual checks and balances of the different components and separate branches of all democratic governments.

When the framers of our Constitution, trained and conversant as they were with history and foreseeing the future of our country, beset with rocks and bars that had caused the shipwreck of many governments, followed the joint mandates of our people and of the express provisions contained in the enabling act that authorized the adoption of such document, distributed the powers of government into three independent and coordinate branches,—the executive, legislative, and the judicial,—the foundations of an independent judiciary were cemented and protective dispositions against encroachments were adopted, for they knew that this is one of the weakest and, therefore, most exposed to attack among the three. But this independence would be unjustified, unless there is an assurance that the administration of justice will be impartial. The peculiar function of the judicial department is to expound the constitution and laws, to settle controversies, to punish the citizens, to enforce the protective guarantees established for the citizens, and in general, to secure a steady, upright and impartial administration of justice. The protection was intended to be both external and internal. A man does not change his nature when he becomes a judge; he is beset with passions, beliefs and prepossessions. His position in the judiciary does not protect him from being swayed by promptings of ambition and self-interest and a more or less justified apprehension of loss of power and official position. If as a member of the judiciary, he finds himself in this sad plight and it becomes apparent from his previous utterances and preconceived opinions that he cannot render possibly an impartial judgment, his permanency in his position can not be justified. The independence of the judiciary must never serve as protective shield for a judge incapable of administering impartial justice. The evil must be eradicated before it is too late.

The preamble of our Constitution contains the express mandates from our People that the government that shall be established must operate "under a regime of justice"; the attainment of the other objectives will be made impossible without an impartial administration of justice.

Applying the principle that additional words to harmonize a general and prior special provisions in the same statute, should be added to the general provision rather than to the special one (*Lichauco & Co. vs. Apostol and Corpus*, 44 Phil., 138), nothing should stop this Court from adding to Rule 124, section 1, the required implementary phrase to give a remedial effect to that legal mandate.

That which is plainly implied in a statute is as much part of it as that which is expressed. The phrase "The Governor General may not deport foreigners except after investigation," etc., implies authority to deport (*In re McCulloch Dick*, 38 Phil., 41). Similarly, the phrase "justice shall be impartially administered" implies authority to disqualify a judge who violates such provision.

Every statute is understood to contain, by implication, if not by express terms, all such provisions, as may be necessary to effectuate its objects and purposes, or to make effective the rights, powers, privileges or jurisdiction which it grants and also such collateral subsidiary consequences as may be fairly and logically inferred from its terms (*Go Chioco vs. Martinez*, 45 Phil., 256).

No other logical interpretation can be given to section 1 of our Rule 124, for it is complete, definite, self-acting and self-executory provision guaranteeing absolutely impartial justice. It is a permeating principle without which our system of justice will inevitably collapse. It is a specific "duty", as indicated in the general title of Rule 124, the violation of which demands a sanction, if it is not to be taken as an empty and meaningless phrase.

One of the most, prominent members of this Court has stated that the reglementary mandate contained in Rule

124, section 1,

"* * * implies that those who are called to administer it (justice) must act freely from all the factors that may impair their impartiality. Bias is one of them. It deprives the person shackled by it of the opportunity to have a clear view of the pending issue so as to form a sound judgment and of the freedom of choice between right and wrong in a given litigation." (Opinion of Justice Perfecto, p. 311, ante.)

Following the reasoning in the Day case, Rule 124 should be applied independently of Rule 126. As thus construed, a prejudiced judge can be disqualified on the ground that he is not an impartial judge. But applying the general principles of law and public policy, independent of Rule 124, Judge Lopez must be disqualified to sit in these cases because of his bias and prejudice, if we wish to maintain and strengthen the faith of our people in the administration of justice.

A different conclusion would amount to retrogression in the evolution of our system of justice. A passing review of the evolution of justice as a controlling motive in trial procedure, namely, the fair treatment of the parties, discloses that in the beginning the motive forces in pursuing the injury was unregulated emotional clan-revenge or clan-retribution or clan-compensation. In time, the objective became clan-preservation; it was observed that the perpetual succession of feuds was weakening the clans, both defensively and offensively. Mohammed, when he forbade the blood-revenge and substituted it for a law-contest, expressly avowed the motive of preventing the tribe from self-destruction. But in the final stage of this evolution, represented by the advance periods "in its civilized" communities—the Greeks on Plato's time, the Romans in Cicero's time, the Germanics in later medieval times—we begin to hear of modern "justice", as a conscious motive,—a motive for establishing a disinterested and impartial tribunal, for allowing ample delay to hold a hearing, for granting help to the accused in presenting the case and so on. It was then that this motive of "justice" then began to dominate in framing the procedure. In modern times, and most particularly in democratic countries, it dominates completely. The process, though, has been slow and the motive did not immediately receive full recognition. We cannot afford to retrogradism, nor even to relax in tin; enforcement of this justicial conquest.

In the words of the Supreme Court of Idaho, in Day vs. Day, ut supra,

"Disregarding said provision of the constitution the ordinary principles of right and justice prohibit or disqualify a judge from trying a case in which he is prejudiced for or against either of the parties to the suit.

"* * * No technical refinement or argument can convince the people that a prejudiced judge can fairly try a case between his friend and his foe. Such a thing might occur, but the general public would not look upon such a trial as an administration of justice without prejudice."

It is of common acceptance and we have stated ourselves time and again that the judiciary is the weakest branch of the three powers of government. The respect accorded to its decisions is based on the absolute postulate that justice is administered fairly and impartially. As in all human activities its merits and demerits are measured by its component elements. An unbiased judiciary is one of the bulwarks of liberty and no indulgence should be dispensed upon any act or conduct of those intrusted with the administration of justice that may cast a doubt or even a shadow of suspicion upon its fairness and dignity. There is no other qualification for justice but fairness and impartiality. Without them, the parapets and ramparts of democracy will have to crumble.

In State ex rel. Barnard vs. Board of Education of the City of Seattle (19 Wash., 8; 67 A. S. R., 706), cited and quoted favorably by this Court in Dais vs. Torres and Ibañez, ut supre, it was held that:

"To compel a litigant to submit to a judge who has already confessedly prejudged him, and who is candid enough to announce his decision in advance, and insist that he will adhere to it, would be so farcical and manifestly wrong that it seems to us that the idea must necessarily be excluded by the very expression

'administration of justice.' "

The theory has been advanced that the State is in estoppel to question the attitude of Judge Lopez, on the premise that his appointment to the People's Court amounted to a recognition of his satisfactory qualifications to sit in that Court. But, his personal qualities are not in issue, rather they are to be presumed, based on the congressional confirmation of his appointment. A judge may be qualified to fill his position, but may be recused to sit in a particular case.

The impartiality of the judges that actually dispense justice is a hypothesis that underlines an ideal administration of justice. If the judge is disqualified to pass judgment in any given case the State has as much right as other parties in a litigation to adopt the necessary measures and apply for a prescribed remedy that may insure an administration of justice that will be fair and impartial for both parties litigant.

In *State ex rel. McAllister vs. Slate* [1919], 214 S. U., 85; 8 A. L. R., 1226, 1232), we have a clear instance in which the right of the State to disqualify a judge from sitting and passing judgment in a case was recognized. This was an original prohibition proceedings, whereby it was sought to prohibit Judge Slate from taking further jurisdiction in the trial of the case wherein the State of Missouri was the plaintiff and a certain John W. Scott was the defendant. When the case was about to be tried, counsel for the State became possessed of information and knowledge of the existence of prejudice on the part of the respondent judge against the State of Missouri. Thereupon, a verified motion alleging the disqualification and incompetence of the respondent judge to sit in the trial of the case of *State vs. Scott* was filed. As this motion was overruled, the application for prohibition was filed before the Supreme Court of Missouri. After stating that Judge Slate had no reason for favoring or shielding the defendant in the original case, for although they had known each other for a great many years, yet their social and political relations were not even friendly, the Supreme Court of Missouri added that it was convinced that the attitude of the trial judge had prejudiced his mind against the prosecution and held:

"We believe that because of this feeling that existed that he could not and did not view with equanimity propositions advanced on behalf of the state by the state's representatives in charge of the prosecution of this case. We feel that he did not possess that calm, dispassionate, and unbiased condition of mind essential in order that the trial judge shall conduct a trial with complete impartiality. We feel that because of this feeling that the interest of the state could not be sufficiently considered by Judge Slate."

The court also said:

"If prejudice existed, it makes no earthly difference in the law of the case as to the manner in which prejudice was engendered. Prejudice is the ultimate fact; its origin is wholly immaterial. Likewise it is immaterial whether it was warranted or unwarranted, justified by the facts or not justified thereby."

We agree that there is nothing better settled in law than that mere error in ruling against the State upon any question of law does not show prejudice or bias on the part of the judge. And even when standing alone, dissociated from other facts and circumstances, it does not afford the least evidence of bias and prejudice. But the situation changes when the instances multiply and the judge insists in his stand against the State, independent or in spite of the facts and evidence before him, indicating "a preconceived opinion that all the accused being prosecuted or to be prosecuted before the court or division of which he is a member are innocent or should be absolved" (Concurring opinion of Mr. Justice Tuason, p. 320, ante).

There is no manner of doubt that if a judge be in fact interested or prejudiced against the State, he ought not to sit. This is obviously both the moral and ethical views and the statute has enacted these moral and ethical views into a law.

The rule of *casus omissus* cannot therefore be properly applied although section 1 of Rule 126, does not provide

for bias and prejudice as grounds for the disqualification of a judge, because section 1 of Rule 124 clearly enjoins that justice shall be impartially administered. The argument that the only remedy against an impartial judge is removal, in accordance with the prescribed rules of procedure, would be a *petitio principii*, for section 1 of Rule 129 specifies as grounds for removal either "serious misconduct or inefficiency."

Even assuming the omission under Rule 126, section 1, of bias and prejudice as causes for disqualification, we cannot possibly ignore the mandatory provision contained in Rule 124, and since the primary purpose of this provision must be accomplished by all means this court should not hesitate in supplying the possible omission in order to effectuate the intention contained therein (*Gleason Coal Co vs. U. S.*, 30 Fed. [2d], 22; *Lane vs. Schomp*, 20 N. J. Eg., 82). A *casus omissus* should be avoided by construction, if reasonably possible (*Young vs. Regents of Univ.*, 87 Kan., 239; 121 Pac., 150), particularly in remedial statutes (*Rural Independence School vs. New Independent School*, 120 Iowa, 119; 94 N. W., 284; *Landrum vs. Flannigan*, 60 Kan., 436; 56 Pac., 752; *Lowe vs. Phelps*, 11 Bush [Ky.], 642).

Under the principle of *reddendo singula singulis* it is also well established as a principle of statutory construction that words in different parts of a statute must be referred to their appropriate connection, given to each in its place, its proper force and effect, and, if possible, rendering none of them useless or superfluous, even if strict grammatical construction demands otherwise. Rule 124, section 1, gives the absolute rule that justice shall be impartially administered. Certainly, the courts cannot abstain from giving this injunction its proper application on the excuse that it is either an enunciation of a mere legal principle or that it is not implemented by the proper procedure for its enforcement. Once the danger has been established that a judge will not render a decision impartially, it becomes the duty of the courts to apply the proper remedy in order that the intention of the principles may not be frustrated.

The second question is whether or not a Division of the People's Court can disqualify one of its members. An analytic dissection of the Enabling Act of the People's Court (Commonwealth Act No. 682) indicates conclusively that our Congress has determined that its members should not decide cases individually but should always act either in bane or in a division of three judges (sections 6, 9, 10. and 12). The explanatory note of House Bill No. 496, introduced in the House of Representatives by its Committee on Judiciary, after recognizing that in pursuance to the Proclamation of 29 December 1944 by General of the (U. S.) Army, Douglas Mac Arthur, there were nearly 4,000 persons, then held under the direction and control of the Commander in Chief of the American forces in the Philippines, as political prisoners, which upon the virtual conclusion of the war, in view of the acceptance by Japan of the terms agreed upon at the Potsdam Conference and the negotiations for the formal surrender of the Japanese forces, had to be released by the United States Army, stated that it was "our duty to provide for the means necessary to deal with these political prisoners", and "that measures should be taken to insure a fair and impartial hearing thereof." But, it also added that the Bill covers all crimes committed since the outbreak of the war as well as those perpetrated posterior to September 1, 1939, irrespective of whether the accused have been detained by representatives of the Government of the United States or not.

The People's Court, created on 25 September 1915, has been vested with the special and limited "jurisdiction" over all cases or crimes against national security committed between "8 December 1941 and 2 September 1945" and filed within six months from the passage of the Act (section 2). The Commonwealth Government thus created a special tribunal for cases of collaboration with the enemy. It "shall, as a body, sit in banc, but it may sit in five divisions of three Judges each. The five Divisions may sit at the same time" (sec. 6). Again, "nine Judges of the People's Court shall constitute a quorum for its sessions in bane, and three Judges for the sessions in Divisions. In the absence of a quorum, the Court of the Division shall stand ipso facto adjourned until such time as the requisite number shall be present, and a memorandum to this effect shall be inserted by the Clerk in the minutes of the

Court" (section 9). It is provided that "the affirmative vote of the majority of a division shall be necessary for the pronouncement of the judgment" (section 10), but "whenever a division of the People's Court fails to reach a decision in a case submitted to it, the same shall be heard and decided by the Court sitting in banc, but the recorded evidence shall be used without retaking the same." Placing more emphasis on the collegiate nature of that Court, it is further provided that the People's Court shall try and decide or otherwise dispose of its cases in the manner provided for herein and in existing laws not inconsistent herewith (section 12).

The single exception to this collective action is found in section 7, reading partially:

"No Judge of the People's Court may disqualify himself or be disqualified except in accordance with the provisions of existing laws or where the accused in a case had intervened in any previous appointment of the Judge to any position in the government service." (Italics ours.)

Reaffirming the collegiate character of the People's Court, it has been wisely provided that anyone of its members "may disqualify himself or be disqualified." Said member "may disqualify himself," either upon his own motion or upon petition of a party in interest, thus granting him in either case the special privilege of passing judgment individually on his own case. But, the law has provided simultaneously that he "may * * * be disqualified." The significant use of this verb in both its reflexive and passive moods indicates the unequivocal intention of the Congress that the disqualification of a judge of the People's Court may be decided also by the collegiate court, either in bane or in a division. To argue that the words "be disqualified" refer to the instance in which a judge is inhibited upon a motion and not *motu proprio* assumes that such Judge is disqualified *ex mero motu*. It ignores the need of a judicial determination of such disqualification. If a judge concurs with the petition for his disqualification and acts accordingly, it may be said accurately that he "disqualified himself," but surely if the action is taken by the collegiate tribunal, independently of the individual member, then the words "be disqualified" acquire their full extent and meaning. Any distortion of such grammatical connotation will tend to befuddle a provision of law that is otherwise unambiguous and unequivocal.

The decision of this Court in the case of *Jurado & Co. vs. Hongkong and Shanghai Banking Corporation*, rendered on 10 October 1902 (1 Phil., 395, 396), which was confirmed impliedly by our resolution of 10 September 1946 (42 Off. Gaz., p. 2156), in which this Court, in bane, has denied the petition of Mr. Justice Briones for leave to refrain from taking part in the deliberation and decision of pending collaboration cases, as well as by our resolution in *De la Rama vs. Misa* (42 Off. Gaz., 1544), in which this Court, also in banc, acting on a motion and citing favorably the aforesaid *Jurado & Co.* case, allowed some Justices to withdraw from that case, supports the conclusion that the question of disqualification of a member of a collegiate court is within the competence of the court as a whole.

The rule that a judge has the discretion to pass upon his own disqualification is justified by the policy of maintaining a continuous flow of justice particularly in those places in which the disqualified judge may not find an immediate substitute. The policy of the rule of disqualification of a judge is of paramount importance, and if it is to yield in any case because of necessity, it is only where there exists a very great necessity to prevent a failure of justice (*Alabama ex ret. Miller vs. Aldrige* [1925], 212 Ala., 660; 103 So., 835; 39 A. L. R., 1470; *Philadelphia vs. Fox*, 64 Pa., 170; *In re Leefe*, 2 Barb. Ch. [N. Y.], 89; *State ex rel. Wickham vs. Nygaard*, 159 Wis., 396; 150 N. W., 513; Ann. Cas., 1917A, 1065; *McCoy vs. Handlin*, 35 So. Dakota, 487; 153 N. W., 361; L. R. A. 1915E, 858; Ann. Cas., 1917A, 1061; *Jeffersonian Pub. Co. vs. Hilliard*, 105 Ala., 576; 17 So., 112; *Gale vs. Montgomery County*, 174 Ind., 181; 91 N. E., 953; Ann. Cas., 1912C, 1090; *Stafford vs. County Ct.*, 58 W. Va., 88; 51 S. E., 2; *Price vs. Fitzpatrick*, 85 W. Va., 76; 100 S. E., 872; see also *Ruling Case Law*, 541; 3 R. C. L. Supp., 1002; Annotation at 39 A.L. R., 1476 et seq.).

The rule permitting action by a disqualified judge when no other is competent to act being an exception, enforced,

by necessity, to a rule resting on sound policy, its application in any case can be justified only by strict and imperious necessity; a disqualified judge is not entitled to act, if it is possible to secure another judge to sit in his place (Bliss vs. Caille Bros. Co., 149 Mich., 601; 113 N. W., 317; 12 Ann. Cas., 513; Moses vs. Julian, 45 N. 11., 52; SI Am. Dec, 114; Paddock vs. Wells, 2 Barb. Ch. [N. Y.], 331; Converse vs. McArthur, 17 Barb. [N. Y.], 411; Re Ryers, 128 Am. Rep., 88).

In McAllister case, ut supra, it was held:

"Neither will it suffice to say that the fact of the existence or non-existence of interest or prejudice must be left for determination to the automatus action of the trial judge's. conscience, nor that some such intention in the legislature's mind is to be deduced from the fact that it has enacted no law which provides details of the practice to govern cases wherein, though interest and prejudice exist, the conscience of the trial judge has failed to move him aright."

Presiding Justice Walker, in Re Howell (273 Mo., 96, 120; 200 S. W., 72), held:

"A condition of the public mind may exist in a locality which would impel a public prosecutor, in an honest effort to discharge his duty, to at least call the trial judge's attention to circumstances indicating that he had, although without corrupt intent, prejudice the case, and that it should be tried by another. This would involve no question of personal integrity, afford at least a fair opportunity for the state to conduct the prosecution free from any possible ulterior influence, and in no wise interfere with any right accords I to the defendant."

Again, in McAllister case, it was held:

"No difficulties or embarrassments can arise in the administration of the criminal law from the view that a circuit judge may be disqualified by reason of prejudice against the state from sitting in the trial of any criminal case, and that, being so disqualified, such judge may be, by our writ of prohibition, prevented from sitting therein. The situation brought about by a compulsory disqualification is in no wise different than the situation which would have existed had the learned respondent of his own volition declared his own disqualification. Automatically the applicatory statutes, will, as in case of a voluntary disqualification, apply and solve air the problems presented, and thus the resultant situation presents no difficulties either insuperable or insolvable."

No component of a collegiate tribunal, inferior to the Supreme Court, can consider himself superior to the Court to which he belongs. Neither section 8 of the old Code of Civil Procedure nor Rule 126, which were intended obviously for unipersonal courts of tribunals, are applicable to this Court or to any collegiate court (see Jewel & Ridge Coal Corp. vs. Local No. 6167, United Mine Workers of America [1945], 325 U. S., 897; 89 Law. ed., 2007).

It is not sound to assert that as a collegiate tribunal may arbitrarily disqualify one of its members, it may by an ad infinitum process destroy itself. This power is necessarily confined within the limits of the law. In case of any remote abuse, this Court can always exercise its supervisory and appellate jurisdiction over all inferior courts. The right of self-preservation is always paramount.

The power granted to a collegiate court to disqualify a member thereof is neither repugnant to nor destructive of the very nature of such court. The objective of the collegiate court is preserved by calling for a substitute of the disqualified member. It is true that the minority, even in a court of justice, must enjoy the same rights, prerogatives and freedom of the majority, to express their opinions and convictions. In a democracy, however, the rule of the majority is a generally accepted principle of conduct. The position adopted by Judge Lopez, in rendering dissenting statements that ignore completely the evidence, are not strictly minority opinions but simply expressions of bias and prejudice against all collaboration cases.

It is safe to assume that Judge Lopez was familiar with the purposes and objectives of the creation of the People's Court (Rule 123, sec. 68 [e], Rules of Court). He must have known that he was expected to pass fair and impartial judgment upon the collaboration cases that were to be filed before said court. If his present conclusions against all collaboration cases pre-existed his acceptance of the position as Judge of the People's Court, nothing can justify his conduct in taking his oath of office. If he arrived at the sweeping and over-all conclusion of dismissing all collaboration cases filed before the Court, then he is disqualified to continue sitting, for he can not render an impartial judgment. Judge Lopez, as will be remembered, has shown not only bias and prejudice in such collaboration cases, but has indicated time and again his open animosity against the Special Prosecutors, when he said:

"But the prosecution can rest assured that if I could be given the sole power to decide the cases against political collaborators and all other cases pending before the People's Court, I would dismiss, every single one of them if the charges were limited to acts legal under the law of the occupant and not in contravention of the limitations upon the powers of the enemy established by international law" (Annex I, p. 24).

And, again,

"In its insistence to ignore the provision of Article II, section 3, of the Constitution, it runs the risk of being declared irresponsible for having caused unnecessary suffering and humiliations upon thousands of innocent citizens by the too hasty initiation of thousands of treason cases without a previous comprehensive and thorough study of the law." (Annex I, p. 25.)

Conflicting opinions among members of a collegiate tribunal are to be expected; such should be encouraged in some instances, if we want to attain the legislative intent in creating a corporate tribunal. But when an opinion indicates bias and prejudice against one definite group of litigants, such as the State, the opinior must be stopped from participating in further deliberations of the court for he is incapable of rendering impartial judgment. An opinionated judgment cannot be certainly be qualified as a wise judgment.

It may seem that a further discussion on the right of the petitioner to the writ of prohibition applied is unnecessary, in view of the cases that have been analyzed, quoted and applied in the preceding paragraphs. We may leave the erroneous impression, however, that said decisions are isolated or that they are not in accord with our established procedure.

The head of Special Prosecutors initiated these petitions against Judge Lopez, by virtue of Rule 67, section 2, Rules of Court, which provides that:

"When the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant to desist from further proceedings in the action or matter specified therein, with costs."

The question has been raised whether or not, there is another plain, speedy and adequate remedy, such as appeal. It is obvious that appeal would not have been sufficiently speedy, as the disqualification of Judge Lopez affects all the cases against political collaborators pending before his Division in the People's Court. But assuming that an appeal was proper, the remedy should have been taken by the respondent judge and not by the State, inasmuch as said Judge Lopez has announced publicly his intention of sitting and participating as Judge of the People's Court in the consideration of such cases, in spite of the resolution of the Second Division, promulgated 8 November 1946, disqualifying him to sit. When the Office of Special Prosecutors filed this petition for prohibition on 11

December 1946, the period of appeal had already elapsed. Through the fault of Judge Lopez himself the remedy of appeal was forfeited. It was illogical to expect an appeal from the winning party.

There may be no precedent in this jurisdiction supporting the issuance of the writ of prohibition requested, but there is none either to the contrary. The a fortiori method is oftentimes the safest way for the courts, for it draws from the experience and the wisdom accumulated in the long process of development of the law. To decide however that no judgment should be rendered in the absence of a precedent would amount to a paralyzation of all the processes of logic and would arrest the development of new doctrines that become the outgrowth of modern ideologies. The iron shackles of precedents have most often caused, gross injustice. Law must be progressive and dynamic and not stagnant. In the full realization of the danger of absolute reliance on precedents, this Court in many past instances has never hesitated in ignoring them; some that have almost been considered as the law of the land have been reversed.

As this extraordinary remedy of prohibition, classified in our Rules of Court as a special civil action, is of Anglo-Saxon origin, it is wise, prudent and proper to resort to the construction and application it has received in the jurisdiction of origin (*Yu Cong Eng vs. Trinidad*, 271 U. S., 500; 70 Law. ed., 1059; 49 Sup. Ct. Rep., 619, reversing 47 Phil., 385; *Chartered Bank of India, Australia and China vs. Imperial and National Bank*, 48 Phil., 931; *Reyes vs. Wells*, 54 Phil., 102; *Tuazon vs. Concepcion*, 54 Phil., 408; *Pando vs. Kette and Sellner*, 54 Phil., 683; *People vs. Makaraig*, 54 Phil., 004; *Ang Giok Chip vs. Springfield Fire & Marine Ins. Co.*, 56 Phil., 375; *Baguinguito vs. Rivera*, 56 Phil., 423; *Sulit vs. Santos*, 56 Phil., 626; *Ossorio vs. Posadas*, 56 Phil., 748).

Prohibition will issue as a remedy to restrain a prejudiced judge from proceeding further in a pending cause where the remedy by appeal is inadequate (*North Bloomfield Fravel Min. Co. vs. Keyser* [1881], 58 Cal., 315 [applying express provision of statute] ; *People ex rel. Brown vs. District Ct.* [1899], 26 Colo., 226; 56 Pac, 1115; *Rush vs. Denhurt* [1910], 138 Ky., 238; 127 S. W., 785; Ann. Cases, 1912—A. 1199; *State ex rel. Jones vs. Gay* [1911], 65 Wash., 629; 118 Pac, 830).

In *Rush vs. Denhurt*, ut supra, it has been held that the remedy by appeal from an order revoking a license is not adequate, where it appears that the county judge is so prejudiced that a license holder cannot obtain a fair and impartial hearing, and the writ of prohibition will issue to restrain the county judge from hearing and determining the proceeding for the revocation of the license.

The right to a writ of prohibition against a prejudiced judge is not made to depend on the existence or non-existence of another adequate legal remedy in each case appealed, but it turns on the sufficiency of a showing of disqualification. In line with this principle, it was held in the *McAllister* case, ut supra, that prohibition is the proper remedy to restrain further action, when the court finds as a matter of fact, from the evidence of the case, that the judge is prejudiced. This was followed in *State ex rel. Renfra vs. Waar* ([1895], 129 Mo., 619; 31 S. W., 608), and in *State ex rel. Lentz vs. Fort* ([1903], 178 Mo., 518; 77 S. W., 741) ; see also *Forest Goal Co. vs. Dolittle* ([1903]), 54 W. Va., 210; 46 S. E., 238; *Grafton vs. Holt* ([1905]), 58 W. Va., 182; 52 S. E., 21; 6 Ann. Cases, 403) ; *Dines vs. Grand Junction Canal* ([1852]), 3 H. L. Cases, 75<); 10 Eng. Reprint, 301; 17 Jur. 73) ; *State ex rel Tyreil vs. Judge of Fifteenth Judicial District* ([1886]), 33 La. Ann., 1923) ; *State ex rel. Seaura vs. Judge of Twenty-First Judicial District* ([1886]), 38 La. Ann., 247).

Assuming that the courts of justice have declined to issue a writ of prohibition under circumstances similar to those obtaining in this case there is nothing that should stop our court from adopting a meliorative stand. An opposite attitude would lead to pejorism and will necessarily deteriorate the administration of justice.

On the other hand, Judge Lopez could have resorted also to the remedy of mandamus or certiorari, if he did not choose to abide by the decision of the Second Division, of which he was a member. As he preferred through his

own choice to abide by the majority decision, he is not in a position at this stage of the case and in these proceedings to attack collaterally the validity and finality of the resolution of 8 November 1946 of the Second Division, disqualifying him from sitting in these cases.

We have shown that the People's Court is essentially a collegiate tribunal and for that reason its decisions are promulgated by majority vote of the court, either in banc or in division. We have also shown that the only instance in which a member of that court can act singly and individually is one in which his disqualification as a judge is placed at issue, but the personal determination of his disqualification, either on his own motion or upon the instance of any of the parties, is merely cumulative, for he may "be disqualified" also either by the People's Court, in banc or by his own division. In the latter case, the order of the division is issued in the lawful exercise of its jurisdiction. The presumption is conclusive that the said order is valid.

In *Banco Español-Filipino vs. Palanca* (37 Phil., 921), the court held that:

"In the case of indirect attack a judgment is conclusively presumed to be valid unless the record affirmatively shows it to be void, while in the case of a direct attack the presumption in favor of its validity may in certain cases be overcome by proof extrinsic to the record. * * * the rule against permitting collateral attacks applies to protect interlocutory orders and proceedings as well as final judgments, though the doctrine of *res judicata* does not. *Van Fleet, Collateral Attack*, 17, p. 21. In marking out the line of distinction between the two doctrines, that treatise says one difference is that a judgment must be final and on the merits to constitute a bar to the further consideration of the issues in the case, on the ground that they are *res judicata*, 'while each and every step taken or order made in the proceeding, whether it concerns the merits or not, is just as impervious to collateral attack as the final judgment on the merits'; further that 'an interlocutory order, no matter how erroneous, if not void, will justify or protect all persons as completely as the final judgment itself. An error therein, no more than in a final judgment, is no excuse for disobedience.'

The principle of the rule that a judgment cannot be attacked collaterally applies also to the other orders and proceedings of the courts (23 Cyc, 1036 cited in *Van Hafflen vs. Ellison*, 12 A. L. R., 1162).

"It seems to be well settled that, as a general proposition, the rule in relation to collateral attack applies to interlocutory orders. For instance, Black, on Judgments, 246, says that the rule against collateral impeachment applies to every judgments, order, decree, or judicial proceedings of whatever species, that is not absolutely void. Another statement of this rule is found in 15 Standard Proc. p. 397, where the author says that the prohibition against collateral impeachment applies to all kinds of judgments and decrees, whether made upon consideration of the merits or not. And at p. 399, the author adds, in whatever sort of judicial proceedings." (12 A. L. R., 1165.)

The *raison d'être* for this principle lies on the basic finality of judicial proceedings, for otherwise there would be converted into academic expressions that will never have any end. As stated in *Van Hafften*, *ut supra*,

"The contrary theory, if adopted, would tend to frustrate the policy of the law to prevent matters once judicially determined from being drawn again into litigation."

The answers filed by the respondents call into question the validity of the order of the Second Division disqualifying Judge Lopez. This amounts to an indirect impeachment of such valid orders. The position taken is belated. The respondents have forfeited their rights to question the validity of said order, for they failed either to assert the same or obtain the proper protection therefrom, when they were still in a position to do so. They can not complain that the enforcement of the order may work to their disadvantage, for if it were so, the situation was created by their own fault. Anyway, no disadvantages would result out of Judge Lopez' disqualification, unless respondents imply that they would have in the Second Division one sure vote for their acquittal, for he had announced that he would dismiss all cases against the political collaborators, notwithstanding any evidence of

actual treason, as long as "the charges were limited to acts legal under the law of the occupant and not in contravention of the limitations upon the powers of the enemy established by international law."

It has been suggested that Rule 129 provides the adequate solution for this situation. We agree that said Rule 129 has been enacted in consonance with Article VIII, section 9, of the Constitution; we further say that it was adopted to implement said constitutional provision. It refers to cases in which a member of the judiciary is guilty either of serious misconduct or inefficiency. It is not for us to decide at this time whether or not a judge who decides a case with bias or prejudice can be charged administratively of the serious misconduct or inefficiency, contemplated in Rule 129, considering that misconduct presupposes malice and malfeasance, while the individual opinions of Judge Lopez may be honest, sincere and undepraved. We are of the opinion that the remedy fails to meet the demands of the peculiar situation that actually confronts the court. We are practically told that we should continue tolerating the infringement of Rule 124, although we possess affirmative evidence that it has already been violated by the past conduct of the respondent judge and by his repeated and challenging utterances, indicating his ill-will against the prosecution and his opinionated remarks on the types of cases that will necessarily require action from him as a Judge of the People's Court. The harm that he may cause to the administration of justice will go beyond the pale of any adequate correction, particularly if his serious misconduct results in the acquittal of a person accused before the People's Court. Double jeopardy may cross the way of a belated attempt to correct the blunder. Government funds would have gone to criminal waste, and the opportunities of securing a merited conviction may be lost in this dilatory process, as witnesses may in the meantime die or disappear, or they may fail to recollect facts through natural lapse of a frail memory.

We refuse to subscribe to any proposition that assumes that our administration of justice is so helpless that we are not empowered to restrain a member of the judiciary admittedly incapable of rendering impartial justice. Rules 124 and 129 contemplate two different situations and call for two different remedies, the one preventive, and the other remedial. Preventive measures are as important if not more effective than remedial actions.

A proceeding instituted for the disqualification of a judge is neither indirect nor it is a devious way of removing him from his position. The petitioner herein appealed originally to Judge Lopez to disqualify himself, with the alternative prayer that should he fail to do so voluntarily, that he be disqualified by the Second Division, to which he had been assigned. Instead of defending himself from the charges of bias and prejudice, Judge Lopez issued a statement, in the guise of a judicial minority opinion, which he used as a bludgeon to emphasize more saliently his prejudice not only against the petitioner but also against all cases of similar nature. Upon failure of Judge Lopez to respect and obey the valid order of the Second Division, and after said resolution became final and unappealable, the petitioner came to this Court for a writ of prohibition, to obtain a restraining order against the respondent Judge and to refrain from sitting in said cases and others of similar nature. The respondent Judge has had his day not only before his Division in the People's Court but also before this Court. Pie was afforded all possible opportunities to defend himself personally and through counsel.

Moreover, the argument is sophistic for removal is permanent and disqualification is temporary and specific. A judge who is disqualified is merely stopped from taking cognizance of the case in which disqualification was declared, but he is not removed as a judge or divested of his rights, privileges and prerogatives.

Assuming nevertheless that the disqualification of Judge Lopez in these cases would result in his removal this Court should not hesitate in making the choice, as in doing so we shall uphold the fundamental principle that constitutes the essence and the reason for the existence of the judiciary, for all courts, whether democratic or not, are established to dispense impartial justice and not to administer injustice.

It has been contended finally that the disqualification of Judge Lopez to sit in these cases is not necessary, for

anyway he is only one of the three members that constitute the Second Division. His vote will always be in the minority. This assumption is untenable, for the weight of the evidence may happen to be highly controversial. No sane man would accept a tripod designed to support a heavy structure, if one of its legs is defective, on the proposal that the weight could be carried by the remaining two legs. Let us assume a case in which the two remaining judges of the Second Division have a divided opinion as to the sufficiency of the evidence on the alleged treasonous acts of the accused. Under such a hypothetical case Judge Lopez will wield the deciding vote, in spite of his preconceived and announced statements that no amount of evidence will change his opinion that all collaboration cases should be dismissed. No other situation could lead as directly to the total destruction of the trust and confidence reposed by our people in our administration of justice. It may be true that courts of justice ought not to be swayed and much less be controlled by public opinion. In fact, the most brilliant and courageous decisions on highly controversial constitutional issues have been rendered under the most difficult conditions, in which public opinion was markedly cleaved if not decidedly in favor of the opposite view. Modern constitutional history recounts that no amount of official pressure and public clamor have turned the balance of justice in such momentous decisions.

What we cannot bring ourselves to understand is that where, as here, the Court is confronted with bias and prejudice in their naked and stark reality, as contradistinguished from being merely presumed from certain peculiar situations which, after all, might not have actually engendered such vitiating influences in the mind and conscience of the judge, it is said that the judge's disqualification cannot be decreed. We cannot agree with the proposition that the presumption of a fact, which may not conform with the truth, should be more potent in moving the Court to a certain conclusion than the fact itself incontrovertibly established. It was aptly said of old that "He who knoweth not the reason for the law, knoweth not the law." May we not paraphrase this wise dictum by saying: "He who applieth not the reason for the law, applieth not the law"?

As a résumé of the different conclusions hereinbefore stated, we hold that:

1. Judge Lopez, in his concurring opinion in criminal case No. 3524, *People's Court, People of the Philippines vs. Guillermo B. Francisco*, and in his dissenting opinion in criminal cases Nos. 8527 and 3521, of the same Court, *People of the Philippines vs. Benigno S. Aquino*, and *People of the Philippines vs. Antonio de las Alas*, respectively, has disclosed bias and prejudice against the State and ill-will against the special prosecutors, by holding that all cases filed against political collaborators should be dismissed, notwithstanding any evidence of adherence, comfort and aid to the enemy, and that the prosecutors may run the risk of being declared irresponsible for having caused grief upon thousands of citizens by the too hasty initiation of thousands of treason cases without a previous comprehension and thorough study of the law;
2. Giving expression to his defiant and pugnacious threats, Judge Lopez wrote a dissenting opinion against the decision of the Second Division convicting the accused in criminal case No. 89, *People's Court, People of the Philippines vs. Pedro Santos Balingit*, who admittedly has helped the Japanese Military Police in the apprehension of guerrillas, some of whom were his own companions in the Manila police force;
3. Notwithstanding the resolution of this Court in *Laurel vs. Misa* (77 Phil., 856), rejecting the theory of suspended sovereignty, Judge Lopez contumaciously dissented against the conviction of the accused in criminal case No. 822, *People of the Philippines vs. Segundo Ubaldo*, who was found guilty of treason, for having adhered and given aid to the enemy, by capturing and turning over to the Japanese Army for beheading seven Filipino guerrillas.
4. Rule 126, section 1, enumerating grounds for disqualification of judges, based on interest or relationship, is not exclusive, as to preclude the recusation of a judge on grounds of bias and prejudice;

5. Rule 124, section 1, Rules of Court, in line with the constitutional principle contained in the Preamble to the Constitution, that the country should be established under "a regime of justice," as further supplemented by the Canons of Judicial Ethics, proclaimed by Administrative Order No. 162 of the Department of Justice, enjoining an impartial administration of justice, which is the quintessence of the judiciary in a democratic country, is mandatory in character, complete, self-acting, self-executory, and it is not a simple affirmation of a general proposition, unenforceable for lack of implementation;
6. The damaging effects of bias and prejudice of Judge Lopez, notwithstanding the honesty and sincerity of his convictions, are shocking to the sense of decency and injurious to public interests and sentiments;
7. The toleration of the conduct of Judge Lopez which disregards the safeguard of fairness and impartiality towards the litigants, would more appropriately be termed administration of injustice, and may lead to the deterioration of the faith and confidence of the public on our Judiciary and end in the ultimate destruction of our whole government ;
8. The resolutions of the Second Division of the People's Court, holding Judge Lopez is disqualified from sitting in the Aquino and De las Alas cases and others of similar nature, is supported by law and precedents;
9. The resolutions mentioned in the preceding paragraph are final and executory, in view of the failure of Judge Lopez and his co-respondents to appeal or to seek their review in due time, either by certiorari or mandamus, and consequently, that they are precluded to attack those resolutions collaterally;
10. The supervisory and appellate jurisdiction of this Court over all inferior courts, by virtue of the rule-making power vested upon it by the Constitution, confer upon this Court the includible duty of maintaining the dignity of the administration of justice, which shall have no other qualification except fairness and impartiality, without which the parapets and ramparts of democracy will crumble;
11. The State is not in estoppel to question the acts and conduct of Judge Lopez, indicated in his pugnacious and defiant remarks evincing patently a condition and propensity of the mind that render him incapable of exercising his functions fairly and impartially towards one of the parties, inasmuch as the State has as much right as other parties in a litigation to adopt the necessary measures and apply for a remedy that may insure a fair and impartial administration of justice;
12. The nature of the constitution of the People's Court, essentially collegiate in character, and the explicit and unambiguous terms of section 7 of Commonwealth Act No. 682, justify the conclusion that the People's Court, either in bane or in division, may disqualify anyone of its members, even over and above the objections of the latter, for it has the inherent power to prevent its destruction and maintain its dignity;
13. The lack of local precedents on the issuance of a writ of prohibition in cases of this nature must not preclude this Court from preventing the commission of a gross injustice, inasmuch as the law is progressive and dynamic, and the processes of logic must not be paralyzed nor the development of new doctrines in consonance with modern ideologies be arrested by the iron shackles of precedents;
14. The procedure by removal prescribed in Rule 129, section 1, Rules of Court, being remedial in character, does not provide for the adequate, proper and speedy remedy required by the circumstances of this case, besides the doubt as to its applicability, inasmuch as serious misconduct, or inefficiency presuppose malice and malfeasance, proofs of which are inexistent;
15. A thesis holding that Judge Lopez cannot be enjoined preventively from exercising his judicial functions in all cases of collaboration with the enemy, despite his admitted bias and prejudice, is a retrogression in the evolution

of our system of justice;

16. A threatened damage must be avoided and prevented before it is actually suffered, and the writ of prohibition enjoining Judge Lopez from sitting in collaboration cases before the People's Court is the most speedy, proper and adequate remedy.

We are confronted with the situation in which it is admitted by all that there is an existing legal principle but it is contended that there is no provision implementing its compliance. The court's determination is demanded, and we cannot shirk from our responsibility of applying the statute, on the excuse that its application is uncertain and indefinite. We must face with courage this difficult task, and determine to our best the intention of the framers of this legal provision. We might at least justify the expense of time and money in the preparation and promulgation of the Rules of Court.

In view of the foregoing, the petition should be granted and the writ of prohibition issued against Eusebio Lopez, Judge of the People's Court.

Feria, Pablo, and Hilado, JJ., concur.

Petition dismissed under Rule 56, section 2.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.