

JORGE B. VARGAS, PETITIONER, VS. EMILIO RILLORAZA, JOSE BERNABE, MANUEL ESCUDERO, JUDGES OF PEOPLE'S COURT, AND THE SOLICITOR GENERAL OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-1612. February 26, 1948

Ponente: HILADO, J.

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HILADO, J.:

Counsel for the defense, in a motion dated August 28, 1947, assails the constitutionality of section 14 of the People's Court Act (Commonwealth Act No. 682) upon the following grounds:

"(a) It provides for qualifications of members of the Supreme Court, other than those provided in section 6, Article VIII of the Philippine Constitution.

"(b) It authorizes the appointment of members of the Supreme Court who do not possess the qualifications set forth in section 6, Article VIII, of the Philippine Constitution.

"(c) It removes from office the members of the Supreme Court by means of a procedure other than impeachment, contrary to Article IX, of the Philippine Constitution.

"(d) It deprives the Commission on Appointments of Congress of its constitutional prerogative to confirm or reject appointments to the Supreme Court.

"(e) It creates two Supreme Courts.

"(f) It impairs the rule making power of the Supreme Court, contrary to section 13, Article VIII, of the Philippine Constitution.

"(g) It is a Bill of Attainder, for it punishes by disqualification members of the Supreme Court who rendered said public service during the Japanese occupation.

"(h) It denies the equal protection of the laws.

"(i) It is an ex post facto legislation.

"(j) It amends the Constitution by a procedure not sanctioned by Article XV, of the Philippine Constitution.

"(k) It destroys the independence of the Judiciary, and it permits the 'packing' of the Supreme Court in certain cases, either by Congress or by the President."

The Solicitor General, in behalf of the prosecution, opposes the motion and in support of his opposition submits these propositions:

"1. Power of Congress to enact section 14 of Commonwealth Act No. 682.

"2. Section 14 of Commonwealth Act No. 682 does not and is not intended to provide an additional

qualification for members of the Supreme Court, much less does it amend section 6, Article VIII, of the Constitution of the Philippines.

"3. Qualifications of members of the Supreme Court prescribed in section 6, Article VIII of the Constitution apply to permanent "appointees"—not to temporary 'designees.'

"4. Section 5, Article VIII of the Constitution is not applicable to temporary designations under section 14, Commonwealth Act No. 682.

"5. It does not remove but merely disqualifies the members of the Supreme Court affected to sit and vote in the particular class of cases therein mentioned.

"6. It does not create an additional 'Special Supreme Court.'

"7. It does not impair the rule-making power of the Supreme Court but merely supplements the Rules of Court.

"8. It is not a bill of attainder.

"9. It is not an ex post facto law.

"10. It does not deny equal protection of the laws either to the Justices of the Supreme Court affected or to the treason indictes concerned.

"11. It does not amend any constitutional provision.

"12. It does not destroy the independence of the judiciary or curtail the jurisdiction of the Supreme Court."

This opposition is a reproduction by reference in the instant case of a similar pleading filed by the Solicitor General in G. R. No. L-398, *People vs. Sison*, pursuant to the resolution of this Court in the instant case dated October 30, 1947, granting the prayer of the Assistant Solicitor General that in the consideration of petitioner's motion of August 28, 1947, herein, the said opposition in G. R. No. L-398 be deemed incorporated in the instant case as the government's answer to the petitioner's memorandum herein of September 27, 1947.

It will not be necessary for the purposes of this resolution to consider and decide all the legal questions thus raised by these conflicting contentions of the parties.

For the purposes of the present resolution, the considerations presently to be set forth are deemed sufficient. Article VIII, section 4, of the Constitution ordains that the Supreme Court shall be composed of a Chief Justice and ten Associate Justices and may sit either in banc or in two divisions unless otherwise provided by law. Section 5 of the same Article provides, inter alia, that the members of the Supreme Court shall be appointed by the President with the consent of the Commission on Appointments. Section 6 of the same Article stipulates that no person may be appointed member of the Supreme Court unless he has been five years a citizen of the Philippines, is at least 40 years of age, and has for 10 years or more been a judge of a court of record or engaged in the practice of law in the Philippines. By virtue of section 9 of said Article, the members of the Supreme Court, among other judicial officials, shall hold office during good behavior, until they reach the age of 70 years, or become incapacitated to discharge the duties of their office. Section 13 of the same Article VIII, inter alia, enunciates that the then existing laws on pleading, practice, and procedure are thereby repealed as statutes, and are declared rules of court, subject to the power of the Supreme Court to alter and modify the same, and to the power of the Congress to repeal, alter, or supplement them. Art. XVI, section 2, provides that "all laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth, and thereafter they shall remain operative, unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the Congress of the Philippines * * *"

Before the adoption of the Constitution, the law on disqualification of judges was contained in the Code of Civil Procedure, sections 8 and 698. If said sections should be considered as parts of the then existing adjective legislation, Article VIII, section 18, of the constitution repealed them along with others dealing with pleading, practice and procedure, as statutes, and declared them rules of court, subject to the power of the Supreme Court to alter and modify the same, without prejudice to the power of the Congress to repeal, alter or supplement them. In such case, when the Constitution so provided in said section 13, it sanctioned as rules of court, among other provisions, those in said sections 8 and 608 of the former Code of Civil Procedure concerning the disqualification of judges. If said sections should be deemed as pertaining to the then existing substantive legislation, then they were continued as laws or statutes by the aforecited provision of Article XVI, section 2.

By virtue either of Article VIII, section 13, or Article XVI, section 2, of the constitution, therefore, the grounds for disqualifying judges, which had been held to include justices of the Supreme Court (*Jurado & Co. vs. Hongkong & Shanghai Banking Corporation*, 1 Phil., 395) were those established in sections 8 and 608 of the former Code of Civil Procedure. The Supreme Court later promulgated the present Rules of Court wherein Rule 126 treats of the matter of disqualification of judicial officers. The provisions of said rule have obviously been taken from the abovesited sections 8 and 608 of the same former Code of Civil Procedure (see also *II Moran*, *Comments on the Rules of Court*, 2d ed., pp. 779-782). By reason of the fact that the aforementioned provisions of the former Code of Civil Procedure were continued by the constitution itself, either as rules of court or as laws or statutes—a point we need not now decide—there can be no question of unconstitutionality or repugnancy of said provisions to the constitution as regards the disqualification of judicial officers. In other words, the framers deemed it fit, right, and proper that said provisions shall continue to govern the disqualification of judicial officers.

Such question of unconstitutionality or repugnancy to the constitution, however, arises in relation to the disqualification of certain members of the Supreme Court provided for in section 14 of the People's Court Act which says:

"SEC. 14. Any Justice of the Supreme Court who held any office or position under the Philippine Executive Commission or under the government called Philippine Republic may not sit and vote in any case brought to that Court under section thirteen hereof in which the accused is a person who held any office or position under either or both the Philippine Executive Commission and the Philippine Republic or any branch, instrumentality and/or agency thereof.

"If, on account of such disqualification, or because of any of the grounds of disqualification of judges, in Rule 126, section 1 of the Rules of Court, or on account of illness, absence or temporary disability the requisite number of Justices necessary to constitute a quorum or to render judgment in any case is not present, the President may designate such number of Judges of First Instance, Judges-at-large of First Instance, or Cadastral Judges, having none of the disqualifications set forth in said section one hereof, as may be necessary to sit temporarily as Justices of said Court, in order to form a quorum or until a judgment in said case is reached."

We propose to approach this question from the following angles: (a) whether or not the Congress had power to add to the pre-existing grounds of disqualification of a Justice of the Supreme Court, that provided for in said section 14; (b) whether or not a person may act as a Justice of the Supreme Court who has not been duly appointed by the President and confirmed by the Commission on Appointments pursuant to the constitution, even only as a "designee"; and (c) whether or not by the method of "designation" created by the aforecited section 14 a Judge of First Instance, Judge-at-large of First Instance, or Cadastral Judge, designated by the President under the same section can constitutionally "sit temporarily as Justice" of the Supreme Court by virtue thereof.

(a) We start with the principle, well known to the legal profession, that no act of the legislature repugnant to the constitution can become a law (*In re Guariña*, 24 Phil., 37, 45; *Marbury vs. Madison*, 1 Cranch, 175). To discover whether the above quoted section 14 of the People's Court Act is repugnant to the constitution, one of the best tests would be to compare the operation of the pertinent constitutional provisions without said section, with their operation with the same section if the latter were to be allowed to produce its effects. It is self-evident that before the enactment of the oft-quoted section of the People's Court Act, it was not only the power but the bounden duty of all the members of the Supreme Court to sit in judgment in all treason cases duly brought or appealed to the Court. That power and that duty arise from the above cited sections of Article VIII of the Constitution, namely, section 4, providing how the court shall be composed and how it may sit, section 9, ordaining that they shall hold office during good behavior until they reach the age of seventy years, or become incapacitated to discharge the duties of their office, and the pertinent constitutional and statutory provisions bearing on the jurisdiction, powers and responsibilities of the Supreme Court. Concretely referring to the instant case, if section 14 of the People's Court Act had not been inserted therein, there can be no question that each and every member of this Court would have to sit in judgment in said case.

But if said section 14 were to be effective, such members of the Court "who held any office or position under the Philippine Executive Commission or under the government called Philippine Republic" would be disqualified from sitting and voting in the instant case, because the accused herein is a person who likewise held an office or position at least under the Philippine Executive Commission. In other words, what the constitution in this respect ordained as a power and a duty to be exercised and fulfilled by said members of the Court, the quoted section of the People's Court Act would prohibit them from exercising and fulfilling. What the constitution directs the section prohibits. A clearer case of repugnancy to the fundamental law can hardly be imagined.

For repugnancy to result it is not necessary that there should be an actual removal of the disqualified Justice from his office for, as above demonstrated, were it not for the challenged section 14 there would have been an uninterrupted continuity in the tenure of the displaced Justice and in his exercise of the powers and fulfillment of the duties appertaining to his office, saving only proper cases or disqualification under Rule 126. What matters here is not only that the Justice affected continue to be a member of the Court and to enjoy the emoluments as well as to exercise the other powers and fulfill the other duties of his office, but that he be left unhampered to exercise all the powers and fulfill all the responsibilities of said office in all cases properly coming before his Court under the constitution, again without prejudice to proper cases of disqualification under Rule 126. Any statute enacted by the legislature which would impede him in this regard, in the words of this Court in *In re Guariña*, supra, citing *Marbury vs. Madison*, supra, simply "can not become law."

It goes without saying that, whether the matter of disqualification of judicial officers belongs to the realm of adjective, or to that of substantive law, whatever modification, change or innovation the legislature may propose to introduce therein, must not in any way contravene the provisions of the constitution, nor be repugnant to the genius of the governmental system established thereby. The tripartite system, the mutual independence of the three departments—in particular, the independence of the judiciary—, the scheme of checks and balances, are commonplaces in democratic governments like this Republic. No legislation may be allowed which would destroy or tend to destroy any of them.

Under Article VIII, section 2(4) of the Constitution the Supreme Court may not be deprived of its appellate jurisdiction, among others, over those criminal cases where the penalty may be death or life imprisonment. Treason may be punished with death or life imprisonment. Pursuant to Article VIII, sections 4, 5, 6, and 9 of the Constitution the jurisdiction of the Supreme Court may only be exercised by the Chief Justice and Associate Justices appointed by the President with the consent of the Commission on Appointments, sitting in banc or in

division, and in cases like those involving treason they must sit in banc. If, according to section 4 of said Article VIII, "the Supreme Court shall be composed" of the Chief Justice and Associate Justices therein referred to, its jurisdiction can only be exercised by it as thus composed. To disqualify any of these constitutional component members of the Court—particularly, as in the instant case, a majority of them—in a treason case, is nothing short of pro tanto depriving the Court itself of its jurisdiction as established by the fundamental law. Disqualification of a judge is a deprivation of his judicial power. (*Diehl vs. Crumb*, 72 Okl., 108; 179 Pac, 44). And if that judge is the one designated by the constitution to exercise the jurisdiction of his court, as is the case with the Justices of this Court, the deprivation of his or their judicial power is equivalent to the deprivation of the judicial power of the court itself. It would seem evident that if the Congress could disqualify members of this Court to take part in the hearing and determination of certain collaboration cases it could extend the disqualification to other cases. The question is not one of degree or reasonableness. It affects the very heart of judicial independence.

Willoughby's *United States Constitutional Law*, under the topic of separation of powers, Volume 3, pages 1622-1624, says:

"Upon the other hand, as we shall see, the courts have not hesitated to protect their own independence from legislative control, not simply by refusing to give effect to retroactive declaratory statutes, or to acts attempting the revision or reversal of judicial determination, but by refusing themselves to entertain jurisdiction in cases in which they have not been given the power to enforce their decrees by their own writs of execution. Thus, as already mentioned, they have refused to act where their decisions have been subject to legislative or administrative revisions. Finally, even where the extent of their jurisdiction, as to both parties litigant and subject-matter, has been subject to legislative control, the courts have not permitted themselves to be deprived of the power necessary for maintaining the dignity, the orderly course of their procedure, and the effectiveness of their writs.

"In order that the court may perform its judicial functions with dignity and effectiveness, it is necessary that it should possess certain powers. Among these is the right to issue certain writs, called extraordinary writs, such as mandamus, injunction, certiorari, prohibition, etc., and especially, to punish for contempt any disobedience to its orders. The possession of these powers the courts have jealously guarded, and in accordance with the constitutional doctrine of the separation and independence of the three departments of government, have held, and undoubtedly will continue to hold, invalid any attempt on the part of the legislature to deprive them by statute of any power the exercise of which they deem essential to the proper performance of their judicial functions. The extent of their jurisdiction, they argue, may be more or less within legislative control, but the possession of powers for the efficient exercise of that jurisdiction, whether statutory or constitutional, which they do possess, they cannot be deprived of.

"It has been already pointed out that the jurisdictions of the inferior Federal courts and the appellate jurisdiction of the Supreme Court are wholly within the control of Congress, depending as they do upon statutory grant. It has, however, been argued that while the extent of this jurisdiction is thus within the control of the legislature, that body may not control the manner in which the jurisdiction which is granted shall be exercised, at least to the extent of denying to the courts the authority to issue writs and take other judicial action necessary for the proper and effective execution of their functions. In other words, the argument is, that while jurisdiction is obtained by congressional grant, judicial power, when once a court is established and given a jurisdiction, at once attaches by the direct force of the Constitution.

"This position was especially argued by Senator Knox, Spooner and Culberson and contested by Senator Bailey during the debate upon the *Repuburn Railway Rate Bill* of 1906. The point at issue was the constitutionality of the amendment offered by' Senator Bailey providing that no rate or charge, regulation or practice, prescribed by the Interstate Commerce Commission, should be set aside or suspended by any preliminary or interlocutory decree or order of a circuit court.

"This position would seem to be well taken, and would apply to attempts upon the part of Congress to specify the classes of statutes whose constitutionality may be questioned by the courts, or to declare the number of justices of the Supreme Court who will be required to concur in order to render a judgment declaring the unconstitutionality of an act of Congress."

In *State vs. Morrill* (16 Ark., 384), the Supreme Court of Arkansas declared:

"The legislature may regulate the exercise of, but cannot abridge, the express or necessarily implied powers granted to this court by the Constitution. If it could, it might encroach upon both the judicial and executive departments, and draw to itself all the powers of government; and thereby destroy that admirable system of checks and balances to be found in the organic framework of both the federal and state institutions, and a favorite theory in the government of the American People * * *."

The members affected by the prohibition have heretofore disqualified themselves, partly because they presumed the statute valid and partly because they would rather have no hand in the revision of the appeals, for the purpose of avoiding even a breath of suspicion as to the impartiality of their actuaciones. However, realizing upon a thorough analysis of the matter by counsel on both sides, the far-reaching implications which the precedent might authorize, imperiling the independence of one coordinate branch of the Government, they finally cast aside all reluctance to consider the point, and came out with practical unanimity to condemn any legislation which impinges or might impinge upon the fundamental independent powers of the judicature.

Some of them have no quarrel with legislative authority to enumerate instances in which judges may not sit. They would even concede that. But, they say, let the rules be promulgated before the event happens or litigation arises. To promulgate them after, would enable the Congress in specific situations to order that Judge X shall not decide the controversy between Y and Z or that. Justice M shall not sit in the appeal of P. S. and so on ad infinitum, and thus decisively influence the decision, for or against one party litigant. Such legislative power might thus be wielded to interfere with the functions of the judiciary, depriving Philippine citizens of their right to impartial awards from judges selected without any reference to the parties or interests to be affected. Unnecessary to prove or impute sinister motives behind the statutory disqualification. Enough that recognition of the power might give way to the operation of unworthy combinations or oppressive designs.

Let it not be argued that the Court is the same, only the membership being different. Because Article VIII, sections 4 and 5, of the Constitution do not admit any composition of the Supreme Court other than by the Chief Justice and Associate Justices therein mentioned appointed as therein provided. And the infringement is enhanced and aggravated where a majority of the members of the Court—as in this case—are replaced by judges of first instance. It is distinctly another Supreme Court in addition to this. And the constitution provides for only one Supreme Court.

From all that has been said above it results that the ground for disqualification added by section 14 of Commonwealth Act No. 682 to those already existing at the time of the adoption of the Constitution and continued by it is not only arbitrary and irrational but positively violative of the organic law.

(b) In the face of the constitutional requirement (Art. VIII, section 5) that the members of the Supreme Court should be appointed by the President with the consent of the Commission on Appointments, we are of opinion that no person not so appointed may act as Justice of the Supreme Court and that the "designation" authorized in section 14 of the People's Court Act to be made by the President of any Judge of First Instance, Judge-at-large of First Instance or Cadastral Judge, can not possibly be a compliance with the provision requiring that appointment. An additional disqualifying circumstance of the "designee" is the lack of confirmation by or consent of the Commission on Appointments. Without intending the least reflection on the ability, learning, and integrity of any such "designee," we are merely construing and applying the fundamental law of the land. A Judge of First

Instance, Judge-at-large of First Instance or Cadastral Judge, under section 149 of the Revised Administrative Code, need not be at least forty years of age, nor have for ten years or more been a judge of a court of record or engaged in the practice of law in the Philippines (as required by section 6 of Article VIII of the Constitution), because under said section he need only have practiced law in the Philippines for a period of not less than five years or have held during a like period within the Philippines an office requiring a lawyer's diploma. So that it may happen that a "designee" under section 14 of the People's Court Act, sitting as a substitute Justice of the Supreme Court in particular collaboration cases, and participating therein in the deliberations and functions of the Supreme Court, like any regular Justice thereof, does not possess the required constitutional qualifications of a regular member of said Court. Here again is another point of repugnancy between the challenged section and the constitution. And if we consider the actual fact that only four of the present ten Justices of this Court are not adversely affected by the disqualification established in section 14 of the People's Court Act, we see that the "designees" constitute a majority when sitting with said four Justices, giving rise to the result that, if the body composed by them all should be considered as the Supreme Court, it would be composed by four members appointed and confirmed pursuant to sections 4 and 5 of Article VIII of the Constitution and six who have not been so appointed and confirmed. The situation would not be helped any by saying that such composition of the Court is only temporary, for no temporary composition of the Supreme Court is authorized by the constitution. This Tribunal, as established under the organic law, is one of the permanent institutions of the government. The clause "unless otherwise provided by law" found in said section 4 can not be construed to authorize any legislation which would alter the composition of the Supreme Court, as determined by the constitution, for however brief a time as may be imagined. In principle, what really matters is not the length or shortness of the alteration of the constitutional composition of the Court, but the very permanence and unalterability of that composition so long as the constitution which ordains it remains permanent and unaltered. We are furthermore of opinion that said clause refers to the number of Justices who were to compose the Court upon its initial organization under the Commonwealth, and the manner of its sitting; that is, that the Legislature, when providing for the initial organization of the Supreme Court under the Commonwealth, was authorized to fix a different number of Justices than eleven, and determine the manner of the Court's sitting differently from that established in section 4 of Article VIII of the Constitution, but it was and is not empowered to alter the qualifications of the Justices and the mode of their appointment, which are matters governed by sections 5 and 6 of said Article VIII wherein the clause "unless otherwise provided by law" does not even exist, nor the provision on who shall be the component members of the Court. Such a legislation was enacted in the form of Commonwealth Acts Nos. 3 and 259, the pertinent provisions of which amended sections 133 and 134 of the Revised Administrative Code. But after liberation, the Chief Executive, by Executive Order No. 40 (41 Off. Gaz., 187), amended sections 133 and 134 of the Revised Administrative Code, as amended by section 2 of Commonwealth Act No. 3 and sections 1 and 2 of Commonwealth Act No. 259, and repealed all acts or parts of acts inconsistent with the provisions of said executive order; and the same Chief Executive, by Executive Order No. 86 (42 Off. Gaz., 15) further amended section 133 of the Revised Administrative Code, as thus previously amended, also repealing all acts or parts of acts inconsistent therewith. Both by virtue of Executive Order No. 40 and Executive Order No. 86, the number of Justices of the Supreme Court, as originally fixed at eleven by the Constitution, was restored.

(c) However temporary or brief may be the action or participation of a judge designated under section 14 of the People's Court Act in a collaboration case of the class therein defined, there is no escaping the fact that he would be participating in the deliberations and acts of the Supreme Court, as the appellate tribunal in such a case, and if allowed to do so, his vote would count as much as that of any regular Justice of the Court. There can be no doubt that the Chief Justice and Associate Justices required by section 4 of Article VIII of the Constitution to compose the Supreme Court are the regular members of the Court—indeed, a "temporary member" thereof would be a misnomer, implying a position not contemplated by the constitution. Section 5 of the same Article VIII, in

requiring the members of the Supreme Court to be appointed by the President with the consent of the Commission on Appointments, makes it plainly indubitable that the Chief Justice and Associate Justices who are to compose the Court and sit therein under section 4, have to be thus appointed and confirmed.

As already adverted to, a mere designation under section 14 of the People's Court Act does not satisfy the constitutional requirement of appointment, with the additional circumstance that as to such designation the Commission on Appointments is entirely dispensed with. We find absolutely nothing in the context which may soundly be construed as authorizing, merely by legislation, any change in the constitutional composition of the Supreme Court, or the performance of its functions by any but its constitutional members. On the other hand, we have to go by the cardinal rule that "usually provisions of a constitution are mandatory rather than directory, and mandatory provisions are binding on all departments of the government." (16 C. J. S., 120).

"The main reason for this rule is that in Constitutions the sovereign itself speaks and is laying down rules which, for the time at least, are to control alike the government and the governed. It is an instrument of a solemn and permanent character, laying down fundamental maxims, and, ordinarily, is not supposed to concern itself with mere rules of order in unessential matters" (Baker vs. Moorhead, 174 N. W., 430, 431; 103 Neb., 811);

"Court is loath to say that any language of the constitution is merely directory". Scopes vs. State, 289 S. W., 363, 366; 154 Tenn., 106; 53 A. L. R., 821). (Footnote 93, C. J. S., 120.)

Under sections 4 and 5 of Article VIII of the Constitution, it is clear that the framers intended the Supreme Court to function through the members who are therein defined; and by section 6 they determined who may be appointed such members. This naturally excludes the intervention of any person or official who is not a member of the Court in the performance of its functions; and it is self-evident that the "designees" spoken of in section 14 of the People's Court Act can not be such members in view of the fact that they have not been appointed and confirmed as such pursuant to said sections 5 and 6.

Hence, we do not see the way clear to the proposition that the "designees" in such a case can constitutionally "sit temporarily as Justices" of the Supreme Court.

By an act of the United States Congress dated February 6, 1905, it was provided in part as follows:

"Temporary judges of Supreme Court; * * * Whenever by reason of temporary disability of any judge of the Supreme Court or by reason of vacancies occurring therein, a quorum of the court shall not be present for business the Governor General of the Philippine Islands is authorized to designate a judge or judges of the court of first Instance in the islands to sit and act temporarily as a judge or judges of the Supreme Court in order to constitute a quorum of said Supreme Court for business. * * *."

A part of the membership of the Court believes that this provision is still in force by virtue of Article XVI, section 2, of the Constitution, and should still be applied to cases of "temporary disability * * * or vacancies occurring" and preventing a quorum; while the other members are not prepared to subscribe to the same view, for the reason that the designation" thereby authorized would be "inconsistent with this Constitution," in the words of the cited section, the same as the "designation" authorized by section 14 of the People's Court Act. Anyway, we need not decide the point now.

This decision has been prepared before this date, and is being promulgated before the Court acts upon the Solicitor General's motion to dismiss dated February 17, 1948, for the rulings contained herein.

For the foregoing considerations, it is declared and ordered: (a) that section 14 of the People's Court Act is unconstitutional in the respects specified in the body of this resolution; and (b) that this case be dealt with

henceforward in pursuance of and in harmony with this resolution. So ordered.

Moran, C.J., Paras, Pablo, Bengzon, and Tuason, JJ., concur.

MORAN, C.J., concurring:

I agree with the majority decision principally upon the ground that section 14 of People's Court Act No. 682 is so unfair and unjustified that it not only unjustly deprives a majority of the members of this Court of their membership in the cognizance of treason cases, but it also provides for substitutes who may not have the qualifications of Justices of the Supreme Court, thus destroying the quality and integrity of the court's composition as is provided by the Constitution. Judicial independence as intended by the Constitution is greatly affected by this legal provision.

PERFECTO, J.:

We concur in the above resolution penned by Mr. Justice Hilado, our whole position being stated in our separate concurring opinion.

BRIONES, J.:

Estoy conforme con la parte dispositiva y me reservo el redactar un dictamen concurrente separado.

PERFECTO, J., concurring:

The constitutionality of section 14 of Commonwealth Act No. 682, creating the People's Court, is again in issue.

As stated in the majority decision, penned by Mr. Justice Hilado, the following are the eleven grounds upon which petitioner challenges the validity of said section:

"(a) It provides for qualifications of members of the Supreme Court, other than those provided in section 6, Article VIII of the Philippine Constitution.

"(b) It authorizes the appointment of members of the Supreme Court who do not possess the qualifications set forth in section 6, Article VIII, of the Philippine Constitution.

" (c) It removes from office the members of the Supreme Court by means of a procedure other than impeachment, contrary to Article IX, of the Philippine Constitution.

"(d) It deprives the Commission on Appointments of Congress of its constitutional prerogative to confirm or reject appointments to the Supreme Court.

"(e) It creates two Supreme Courts.

"(f) It impairs the rule making power of the Supreme Court, contrary to section 13, Article VIII, of the Philippine Constitution.

"(g) It is a Bill of Attainder, for it punishes by disqualification members of the Supreme Court who rendered said public service during the Japanese occupation.

"(h) It denies the equal protection of the laws.

"(i) It is an ex post facto legislation.

"(j) It amends the Constitution by a procedure not sanctioned by Article XV, of the Philippine Constitution.

"(k) It destroys the independence of the Judiciary, and it permits the 'packing' of the Supreme Court in certain cases, either by Congress or by the President."

We fully concur in all the reasonings of the decision showing the conflict between the section in controversy and the provisions of the Constitution and, therefore, in the conclusion that said section is null and void ab initio, with the same effect as if it had never been enacted. We are not, however, in a position to agree with the pronouncements that may imply that the Constitution has confirmed the provisions of the Code of Civil Procedure regarding disqualifications of members of the judiciary. When the Convention conferred upon the Supreme Court the rule-making power, as provided in section 13 of Article VIII, it did not have in mind the idea of considering the specific provisions of law then existing on pleading, practice, and procedure in courts of justice, but only of repealing them as statutory provisions and turning them into judicial rules, so that the Supreme Court may alter and modify them. The conversion had been necessary, because the power to change statutory provisions belongs exclusively to the legislative department. Judicial disqualification is a matter of substantive law and, therefore, beyond the rule-making power of the Supreme Court. Otherwise, it will also be subject to legislation, as Congress is expressly empowered to legislate upon judicial rules adopted by the Supreme Court. Congress can not legislate on judicial disqualification without jeopardizing judicial independence. Judicial qualifications and disqualifications are matters basically constitutional. They go to the very roots and existence of the judicial system established by our people. The present provisions of the Constitution are amply satisfactory. If the good behavior, age limit and incapacity to discharge the duties of the office therein mentioned are not satisfactory, correction can be effected only by constitutional amendment. We deem it unnecessary to elaborate now on the propositions above enunciated.

The eleven grounds advanced by petitioner to assail the constitutionality of section 14 of Commonwealth Act No. 682 are all well taken, as we have already shown in our unpublished two written opinions in *Rama vs. Misa*, L-263, dated February 27, and April 1, 1946.

In the first one we said:

"Since we began to enjoy the privilege of sitting in this Court, one of the highest positions within the gift of our people, for less than a year, this is the second time we are compelled to come out to fight for judicial independence as one of the political values that should be treasured permanently, if courts must forever be the unconquerable bulwark of the rights and privileges of the individuals and the principles of justice, liberty, and democracy. The first occasion was when we wrote our concurring opinion on September 6, 1945, in the case of *Raquiza vs. Bradford*, L-44.

"The respondents' motion, upon which the majority resolution was adopted, invokes the provisions of section 14 of Commonwealth Act No. 682, creating the People's Court, disqualifying any justice who held any office or position under the Philippine Executive Commission or under the government called Philippine Republic, during the enemy occupation, to sit and vote in any case in which the accused held any office or position under said governments or any branch, instrumentality, and/or agency thereof.

"We are of opinion that said section, so far as it provides for said disqualification, is null and void, and without effect, because:

"(1) It is utterly wrong as a matter of principle;

"(2) It violates the Constitution of the Philippines; and

"(3) It destroys the judicial independence of the Supreme Court.

"Whatever the reason Congress had in mind in providing for said disqualification, it is important to remember that respondents have made of record that their motion 'is not inspired by any lack of confidence in the impartiality,

character, and integrity of the honorable members of this Court affected by the relief sought,' and that there is no basis to say the contrary.

"We must also bear in mind that in France, Mongibaux, the former Chief Justice of the Supreme Court under the Vichy government, was the one who tried, judged, and sentenced Marshal Petain. No one cast any doubt as to his impartiality, character, and integrity. No one disputed the wisdom and justice of his decision, condemning as guilty of collaboration the head of the Vichy government.

"Article VIII, section 6, of the Constitution, provides for the qualifications of a person who may be appointed member of the Supreme Court. Section 14 of Act 682, in effect, in the cases mentioned therein, amends the Constitution by adding a new qualification, namely, that the member had not held any office or position under the Philippine Executive Commission or the so-called Philippine Republic. Congress, according to Article XV of the Constitution, may propose amendments to it, the proposal to be approved by the people, but it cannot amend it.

"Article VIII, section 8, of the Constitution, provides that Congress 'shall prescribe the qualifications of judges of inferior courts.' We may construe the provision as also authorizing Congress to prescribe the 'disqualifications' of said judges. But the very fact that such provision exists in the Constitution regarding judges of inferior courts, but not of the Supreme Court, must be interpreted to the effect that Congress is without power to prescribe disqualifications for said justices. *Inclusio unius est exclusio alterius*.

"Article VIII, section 9, of the Constitution, provides that the members of the Supreme Court 'shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office.' But the provision is completely silent as to how and by whom said members may be deprived of their right to hold office in case they become incapacitated to discharge the duties thereof, reach the age of seventy, or failed to behave accordingly. Shall the power be exercised by the Supreme Court itself, or shall it be left to the conscience of the affected justice? *Quacres*. Certainly, they cannot be exercised by legislation.

"It seems that the good behavior clause of Article VIII, section 9, must be jointly considered with Article IX, section 1, where the acts as against good behavior under Article VIII, section 9, should be considered specified. In such case, Article IX provides for the procedure for removal by impeachment. The procedure provided in Article IX cannot be substituted by legislation without violating the fundamental law of the land.

"With all the admiration and profound respect we entertain for Franklin Delano Roosevelt, who possibly will be rated as the greatest president of the United States of America, and, undoubtedly, as one of the highest apostles of freedom, democracy, and humanity, we must admit that he committed a great blunder when he proposed to pack the United States Supreme Court with additional new and younger members. All the believers in democratic institutions are glad that the proposal met defeat, the most crushing and resounding one suffered in Congress by President Roosevelt.

"The wrong about to be committed by said proposal was one by addition. The wrong committed by section 14 of Act 682 is by subtraction. Whether by addition or by subtraction, the principle is essentially wrong, unjust, subversive, destructive of the principle of separation of powers. It will, ultimately, turn the Supreme Court, not as it is and should be, not as one of the dignified powers of government, but as a mere appendix of Congress, subject to the whims of the leaders of the same.

"With all our respect and regard for Congress, if we have to be realistic, we should not close our eyes to the logical pernicious consequences of the principle, if we sanction it, that would allow Congress to provide for disqualifications on any ground, no matter what the wisdom or nonsense of it, of justices of the Supreme Court. If we recognize that power in Congress, it will make of the Supreme Court a mere tool in the hands of the leaders of

the legislative power who may, by legislation, disqualify one or more members of the Supreme Court today, for one reason; tomorrow, upon different grounds; and the day after tomorrow, on further grounds, until the members affected are, in effect, deprived totally of their functions and office, until the Supreme Court is altogether crippled or totally abolished.

"We refuse absolutely to sanction or to take part in such a governmental framework where the highest tribunal of the land will not be more than a mocking shadow of judicial power.

"No power in government should try, directly or indirectly, to control the manner by which the Supreme Court and its members should administer justice. Providing for disqualifications by law is an attempt to control the Supreme Court and its members. Such attempt must be rejected with energy. Once the members of this Supreme Court have been appointed, their appointments have been confirmed by the Commission on Appointments, and they have taken their oath of office, the only power that can control their acts is the power of their own conscience. People and government should depend on them with implicit faith and confidence. Over their consciences will always loom, as an eternal guiding star, the object of their functions: justice, with all its overpowering moral and divine force.

"According to Cicero 'in justice the brilliance of virtue is greater, and from her they receive their name just men' (De Offic. 1. 1, tit. de Justitia); and Saint Thomas Aquinas maintains that 'justice excels all other moral virtues' and 'it is the most excellent among all other virtues' (Summa Theologica, Second Part, Cuestion XVIII, Article XII.)

"Although the pseudo-progressives of new pattern, those intellectual renegades who spurn the wisdom of the ages, may not relish it, we have to quote from Aristotle that 'justice seems to be the most excellent virtue, and that neither the afternoon star nor the morning star inspires more admiration than her' (Ethics, 1. 5. c. 1), as 'the greatest virtues are necessarily those which are more useful to others, because virtue is a beneficent faculty' (Rhetor. 1, 1, c. 9). After all, those who look farther in the past will see better the future. Who can pull the farther back the string of a bow, he will send the arrow the farther. Robert Maynard Hutchins, President of the University of Chicago, one of the institutions which greatly contributed to the development of the atomic bomb, in the 1945 edition of his book 'The High Learning in America' could not avoid invoking several times the authority of the Stagirate. The Pleiad of great physicists who are responsible for the ushering of the Atomic Energy Era, the most revolutionary in the history of humanity—Becquerel, Curie, Hertz, Einstein, Bohr, Smyth, Rutherford, Meitner, Oppenheimer, and many others— themselves admitted that the ideas of Democritus and Aristotle on matter, on energy, on the elements of universe, expressed centuries before Christ, the philosopher's stone of the medieval alchemists, and the ideas of Galileo and Newton are direct progenitors and inspirers of the present concepts on matter and energy as the different expressions of the same thing and which permitted the discovery of that wonderful microcosmos where the constellations of electrons, protons, neutrons, deuterons, photons, alpha, beta and gamma rays, and other radiant particles are in play, offering to man the mastery it never had on physical nature with the harnessing of the basic forces of universe.

"There are thoughts and ideas bequeathed to us by great thinkers which remain fresh and young through the ages and centuries, like the flesh of the woolly mammoth, buried in the Russian tundras, which today can still be eaten, although the beasts died in the pre-historic darkness of remote antiquity. Those are the thoughts and ideas insufflated with the vitality of eternal truth. They spring from the minds of the geniuses with which Nature, once in a while, blesses certain epochs, to be the intellectual leaders of mankind for all time.

"The ignorants and retrogrades will never understand it; but it is a fact that in the summit of his glorious career, Justice Holmes, the greatest judge of modern times, continued reading Aristotle. To free themselves for the

sorrows they feel with the surrounding market of vulgarity, where pygmies and ruffraffs dominate, great minds seek enjoyment in the company of their kind. Eagles will not be happy in the society of flies and mosquitoes. That explains the calibre of the friends Rizal had in Europe.

"All these may sound esoteric to the unfortunate class of morons or mental degenerates. We cannot help it. Our words are addressed to persons with normal understanding.

"We wish to make it of record that, as a matter of fact, some of the members who disqualified themselves had some doubts on the validity of any law, passed after their appointment to this Court, which under the guise of establishing disqualifications has the effect of either temporarily removing them from office or changing the composition of the Supreme Court, when called upon to decide those issues reserved to it by the Constitution. But they chose not to inquire further into the matter, what with their opinion that under section 14 disqualification was optional with them and the court, and the prima facie presumption in favor of the law's validity.

"We, therefore, dissent from the majority's resolution. We maintain that the affected members are duty bound to ignore section 14 of Act 682 and should proceed to continue exercising their constitutional functions in the present case."

The above was written in relation to a resolution adopted by the Supreme Court with the members who decided to disqualify themselves taking part.

The second opinion was written in relation with a resolution adopted by a body composed of a minority of Justices of the Supreme Court and a majority of judges designated by the President of the Philippines to sit in the Supreme Court. We stated therein:

"A motion was filed by petitioner impugning the organization and constitution of the Supreme Court as presently constituted for purposes of taking cognizance, trying and deciding the present case, raising specially the issue as to the validity, under the Constitution, of the designation of the five judges of courts of first instance to sit as acting justices of the Supreme Court in substitution of the Chief Justice and four Justices who, upon motion of the party respondent and in the compliance with the first paragraph of section 14 of Act 682, creating the People's Court, inhibited themselves in this case.

"The motion was filed on Monday, April 1, 1946, just before the hearing of this case on the merits. After a few minutes deliberation, the majority resolved to deny the motion and, consequently, to reject the point of constitutional law raised in said motion.

"The question being of far-reaching importance and having been raised for the first time, we were of opinion that it requires deep thinking and study, matured deliberation, and ample and long discussion before this Supreme Court could do full justice in disposing of so important question. For said purposes the few minutes employed in considering and deciding the question were, to our mind, absolutely inadequate. A few hours would even be also inadequate. Days, with full opportunity for complete rest in the intervening nights, are imperatively needed. But the majority, overruling our position, unsupported by all the members of this court, except ourselves, thought otherwise and decided the question on a lightning-like fashion, deciding, furthermore, to verbally promulgate the resolution at the beginning of the hearing, without waiting for the resolution to be formally committed in writing as naturally must be expected from a court of record par excellence as no other can be than the highest tribunal of the land.

"We wanted to have an opportunity of studying further the question, of thinking more on it and, at least, for a solitary self discussion, in lieu of a deliberation with our brethren assembled in a collective body, the benefits of which we were deprived, we announced at the hearing, when the resolution was verbally promulgated, that we are reserving our vote until the resolution could be reduced to writing.

"Now we are ready to cast our vote with full consciousness, for the upholding of the constitutional question raised by petitioner, and in support of that vote we are writing this opinion.

"Our position is that the designation of the five judges of first instance to sit in this Supreme Court as acting Justices in the place of the Chief Justice and four Justices who inhibited themselves is, under the Constitution, null and void; that said judges can not sit in this Supreme Court and take part in its deliberations and decision in this case without violating the Constitution; and that all actions of this court taken with the participation of said temporary Justices are and must be declared null and void and without effect. There are several grounds in support of this position.

I

"Section 1 of Article VIII of the Constitution provides:

"'The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.'

"This provision makes the Supreme Court a constitutional organism, whose existence, constitution, and organization are provided in the fundamental law of the land, and said matters cannot be the subject of laws enacted by the legislative power, unless expressly so authorized by the Constitution itself.

"Otherwise, Congress will be in a position to change the composition and organization of the Supreme Court by actually amending the corresponding constitutional provisions, and such thing cannot be done without violating the fundamental law, as any amendment of the same to take effect must be submitted to the sanction and approval of the people represented by the body of the national electorate.

"The provisions of section 14 of Act 682 regarding disqualification of members of this Supreme Court and for the designation of judges who may take their place in this Court have the effect of amending the Constitution.

"In a former dissenting opinion in this case we have already had the opportunity of expressing our opinion to the effect that said disqualification provision is null and void, being violative of the Constitution.

"As a corollary, it is unavoidable to declare also unconstitutional the provision which authorizes the President of the Philippines to designate judges of inferior courts to sit in this Tribunal in the place of the disqualified Justices, it appearing that there is nothing in the Constitution authorizing Congress or any legislative body to enact a law providing for said designation.

II

"Section 5 of Article VIII of the Constitution provides:

" ' The members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments.'

"This provision clearly limits the procedure by which positions in the Supreme Court may be filled up.

"Under the provision, the members of the Supreme Court must be appointed by the President of the Philippines, and the appointment must be with the consent of the Commission on Appointments.

"Section 6 of Article VIII of the Constitution can in no way be interpreted as authorizing a judge of an inferior court to sit in this Supreme Court, not by appointment by the President of the Philippines and with the consent of the Commission on Appointments, but just by a mere designation made by the President and without even the concurrence of the Commission on Appointments.

"The designation of five judges of first instance to sit in this Supreme Court constitutes a clear and flagrant

violation of the constitutional provision which requires that the members of the Supreme Court 'shall be appointed by the President with the consent of the Commission on Appointments.'

"The provision in the second paragraph of section 14 of Act 682, in authorizing the designation of judges of first instance to sit in this Supreme Court, in fact, grants the President an arbitrary power which the framers of the Constitution would never think of granting him.

"Said provisions, besides granting the President an arbitrary power, has the effect of depriving the Commission on Appointments of its constitutional right to consent or not to consent to the appointment of members of the Supreme Court.

"The framers of the Constitution considered it wise to have the appointment of members of the Supreme Court effected in such a way as will guarantee the expression of the will of the people, considering that the tremendous judicial powers which the Supreme Court exercises cannot but affect vitally the well-being and happiness of all the people of the Philippines.

"So they granted the power of appointment to the President, who is elected at large by the whole country. But to establish further guarantees that the appointments count with the whole-hearted approval of the people, the authors of the Constitution provided that the appointments be approved by the Commission on Appointments, which is composed of one-half of the members of the Senate, including the President thereof, and of a substantial number of members of the House of Representatives. In this way, the members of this Supreme Court are appointed with the joint action of the two powers of the government, more directly in contact with the people, the executive and the legislative.

"The designation of judges of first instance to sit in this Supreme Court is dependent only on the action of a single individual, action that is of temporary nature and which may be changed, revoked, or reversed at any time, under any circumstance, without any limitation except the psychological limitations of the powers of his imagination.

III

"Section 6 of Article VIII of the Constitution provides:

" ' No person may be appointed member of the Supreme Court unless he has been five years a citizen of the Philippines.'

"On the other side, section 8 of Article VIII of the Constitution provides that:

" 'Congress shall prescribe the qualifications of judges of inferior courts, but no person may be appointed judge of any such courts unless he is a citizen of the Philippines.'

"As a member of the Constitutional Convention and of the Committee on Style thereof which drafted the final text of the Constitution, we are in a position to state categorically that the Constitutional Convention considered it a vital guarantee that no member of the Supreme Court could be appointed 'unless he has been five years a citizen of the Philippines', because we would not trust the important functions of this Supreme Court in the hands of men who have not enough time to learn, to think, and to feel as a born Filipino citizen should. We considered this condition necessary and vital with regards to the highest tribunal of the land, whose decisions shall usually be the last word in the administration of justice.

"We did not deem it necessary to require the same condition with respect to judges of courts inferior to the Supreme Court, so we provided that it was enough that the appointee be 'a citizen of the Philippines', no matter whether he be a one-year or one-day Filipino citizen.

"Therefore, a one-day Filipino citizen may become a judge of first instance. If we have to abide by the provision of Act 682 herein in question, such one-day Filipino citizen may be designated by the President to sit in the Supreme Court. That is while the Constitution requires that a member of the Supreme Court must be, at least, 'five years a citizen of the Philippines', Commonwealth Act 682 authorizes to sit in this Supreme Court a judge who is just a one-day or a one-year Filipino citizen. The violation of the Constitution cannot be more patent and flagrant.

IV

"Section 6 of Article VIII of the Constitution requires that a person to be appointed a member of the Supreme Court, must be 'at least 40 years of age.'

"No such age requirement is provided in section 8 of Article VIII of the Constitution with regards to judges of inferior courts.

"Therefore, a citizen who is 30 years or 20 years of age may be appointed as judge of first instance.

"A judge of first instance of 30 or 20 years, under the provision in question of Commonwealth Act 682, may be designated by the President to sit in this Supreme Court.

"It is unnecessary that we would explain the reasons of the Constitutional Convention in requiring that members of this Supreme Court must be at least 40 years of age, as said reasons are self-evident.

"There is no reasoning that can avoid recognizing the fact that the provision of Commonwealth Act 682 in authorizing, in fact, that a judge of 30 or 20 years of age may sit as acting Justice of the Supreme Court is an evident violation of section 6 of Article VIII of the Constitution.

V

"Section 6 of Article VIII of the Constitution provides that no person may be appointed member of the Supreme Court unless he 'has for ten years or more been a judge of a court of record or engaged in the practice of law in the Philippines.'

"Section 8 of Article VIII of the Constitution also requires that judges of inferior courts should have been 'admitted to the practice of law in the Philippines.'

"Therefore, a lawyer who has just been authorized to practice law may immediately be appointed a judge of first instance.

"Such a judge, under Act 682, may be designated to sit as a member of this Supreme Court.

"This is another clear violation of the Constitution when it provides in section 6 of Article VIII that no person may be appointed as member of the Supreme Court unless 'he has for ten years or more been a judge of a court of record or engaged in the practice of law in the Philippines.'

VI

"Section 7 of Article VIII of the Constitution provides:

" 'No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court. The Congress shall by law determine the residence of judges of inferior courts.'

"If a judge of an inferior court including courts of first instance and municipal and justice of the peace courts cannot be transferred or designated to another district without the approval of the Supreme Court, how can he be

transferred to a higher court, such as the Supreme Court, without the approval of the latter?

"If to transfer a judge of a municipal court to another municipal court the Constitution requires the approval of the Supreme Court, although the transfer is to a court of the same category as the one to which the judge has been appointed, and so is the case of a judge of first instance, it is so because the Constitution seeks to maintain the stability of judges in their respective districts, and that stability cannot be disturbed but by following the constitutional procedure.

"Under the maxim of *inclusio unius est exclusio alterius*, a judge of an inferior court cannot be transferred but only to other district of the same category, provided the transfer is approved by the Supreme Court.

"The designation of judges of first instance to sit in this Supreme Court as provided in section 14 of Act 682 is, in effect, a transfer, and being a transfer not expressly authorized by the Constitution cannot be effected without violating the Constitution.

VII

"So far, we have dealt with the qualifications of judges of inferior courts as required by the Constitution, and it may be argued that the provisions of the Constitution do not preclude the legislative power from requiring, besides the minimum qualifications fixed by the Constitution, further qualifications in such a way that no person may be appointed as judge of an inferior court unless he possesses the same qualifications required by the Constitution for a person to be appointed as a member of the Supreme Court.

"As can be seen, the argument is based on a legal situation which may be set up by the legislative power, but may not also happen in actual practice. This very fact is enough basis for dismissing the argument.

"But if this were not enough, we may point out that the situation at present shows the innate weakness of the argument, as the law at present does not require that a person to be appointed to a position in any inferior court should have the same qualifications required by the Constitution for a person to be appointed a member of the Supreme Court.

"The qualifications for judges of first instance, the next following in category to Justices of the Supreme Court, are provided for in section 149 of the Administrative Code, which reads as follows:

" 'SEC. 149. Qualifications.—No person shall be appointed judge of first instance or auxiliary judge unless he has practiced law in the Philippine Islands or in the United States for a period of not less than five years or has held during a like period, within the Philippine Islands or within the United States, an office requiring a lawyer's diploma as an indispensable requisite; and before assuming such judicial office he shall qualify as a member of the bar of the Supreme Court of the Philippine Islands if he has not already done so.'

"As can be seen, none of the three essential qualifications specifically required by the Constitution for a person to be appointed as a member of the Supreme Court is required for a person to be appointed as a judge of first instance.

"Consequently, section 14 of Act 682 is undeniably unconstitutional, not only because it disqualifies and eliminates five members of this Supreme Court, including the Chief Justice, such disqualifications being violative of the Constitution, as we have shown in our dissenting opinion in this same case dated February 27, 1946, but because in its second paragraph it authorizes the designation of judges of inferior courts to sit temporarily as Justices of the Supreme Court, although said judges are not required to possess the qualifications required of a member of the Supreme Court.

"Said second paragraph of section 14 of Act 682 reads as follows:

" 'If, on account of such disqualification, or because of any of the grounds of disqualification of judges in Rule 126, section 1 of the Rules of Court, or on account of illness, absence or temporary disability the requisite number of Justices necessary to constitute a quorum or to render judgment in any case is not present, the President may designate such number of Judges of First Instance, Judges-at-large of First Instance, or Cadastral Judges, having none of the disqualifications set forth in said section one hereof, as may be necessary to sit temporarily as Justices of said Court, in order to form a quorum or until a judgment in said case is reached.'

"It can be alleged, as a matter of fact, that the five judges designated by the President of the Philippines to sit as temporary Justices of the Supreme Court in substitution of the Chief Justice and four Justices who inhibited themselves from taking part in the consideration of this case, possess each and everyone of them all the minimum qualifications required by the Constitution of a person who could be appointed as Justice of the Supreme Court.

"The fact does not destroy the theory that the second paragraph of section 14 of Act 682 authorizes, in utter violation of the Constitution, the designation of judges not possessing all or any of the three minimum constitutional qualifications as Justices of the Supreme Court to sit and act as such Justices of the Supreme Court.

VIII

"To give effectiveness to section 14 of Act 682 is to sanction a principle radically wrong and highly subversive.

"To recognize the power of Congress to enact section 14 of Act 682 is to recognize in the legislative power an authority not granted to it by the Constitution and which, in effect, is an authority that can be used, as in fact it is actually used, to defeat the very provisions of the Constitution concerning judicial power.

"If Congress were empowered to enact such a law, it is because it should be recognized as possessing the power to legislate upon membership of this Supreme Court, which is tantamount to making the Supreme Court a toy that Congress may handle according to its caprice and whims.

"If Congress may authorize the designation of district judges of first instance, judges-at-large of first instance, or cadastral judges, no matter whether they are occupying their respective positions permanently or in acting or temporary capacity, to sit as Justices of the Supreme Court, then Congress may use the same power to authorize the designation of other persons, including those who do not possess even the qualifications of judges of inferior courts.

"If the theory is good, then there will be no limitations as to the class or classes of persons which Congress may authorize to sit in the highest tribunal of the land, except legislative discretion or political expediency, none of which may be considered as limitations at all, there being no fast principle or doctrine that may rule either one of them.

"One day Congress may authorize judges of lower courts to sit as Justices of the Supreme Court. The next day it may authorize any person who is not even a judge of a lower court nor a lawyer. And the day following the next, Congress may authorize senators or representatives to sit as Justices of the Supreme Court.

"Of course, these are extreme instances, and it may be argued that Congress will not be so foolish as to entertain such action or to dare challenge the good sense of public opinion. But such argument cannot destroy the logical consequences of the principle which we are exposing as public menace number one against the orderly organization and functioning of a constitutional government.

"To show how wrong the principle is, we must follow it to all its consequences, and it cannot be correct if it leads us to disaster, anarchy, and chaos, such being the fatally inevitable results of the principle upon which section 14

of Act 682 is premised.

IX

"Section 14 of Act 682, besides being evidently unconstitutional, is highly inimical to public interests.

"Section 1 of Article VIII of the Constitution provides: 'The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.'

"In accordance with this provision, the legislature created the judicial positions to which the five judges designated as temporary Justices of the Supreme Court have been appointed.

"It is undeniable that public interests demand that said judicial positions should exist, that the positions be filled by the respective judges, that they should function in order that they may do their part in the Philippine system of administration of justice.

"The positions would not have been created by the legislature if not required by public interests. The same public interests demand that the positions should continue, otherwise, Congress would have abolished them. Public interests demand that said positions be used to administer justice and, in order that the position may function, they should be filled by the corresponding judges. Therefore, by abiding by public interests, the President of the Philippines appointed said five judges to their respective judicial positions. But if there is any doubt as to the wisdom of the President in appointing said judges, the Commission on Appointments by passing upon the appointments will dispel it, and, lastly, there is the eternal vigilance of the popular tribunal of last resort—public opinion—which cannot fail to expose, unmask, and denounce the appointments if they are not required by or are against public interests. Not a single voice has been raised to oppose the appointments, not a single finger has been pointed to denounce the appointments, not a single gesture has been shown against the appointments.

"But, in pursuance of section 14 of Act 682, the five judges are snatched from their respective positions and deprived of their functions as judges, are eliminated from their jurisdiction to continue administering justice in the many legal cases pending before them, just to unconstitutionally assume functions as Justices of the Supreme Court.

"It cannot be denied that the legal cases pending before them in their respective courts will have to be indefinitely postponed until they are freed from the burden of serving as temporary Justices of the Supreme Court. Once more a new cause is created to further aggravate the chronic ailment of our administration of justice: delay. Once more the victims will clamor with anguishing voice that immemorial plaint: justice delayed is justice denied.

"There is absolutely no merit in the allegation that other judges may be temporarily transferred to take the place of the judges designated to act as Justices of the Supreme Court, because the transfer does not solve the problem of delay, but only will have the effect of changing the victims of the unjust delay. If it is said that other judges may be transferred to take the place of those who may be transferred to take the place of those designated as Justices of the Supreme Court, it can be answered that the situation shall remain irretrievably a vicious circle, where a chain of makeshifts offers but a temporarily relief by producing new wrongs and multiplying the number of the victims.

X

"The power granted to the President by section 14 of Act 682 will permit a judicial rigodon worst than the one against which Judge Borromeo engaged in a legal battle which made history in our administration of justice, and worst than the judicial lottery which was nullified through the efforts of Judge Pedro Concepcion, later Presiding Justice of the Court of Appeals and still later Justice of the Supreme Court, in a legal case which has also become memorable.

"Under the provision in question, for reasons of his own or for no reason at all, the President may replace the present five Justices in this Court by designating other persons coming from different courts or judicial districts. In the same fashion, the President may resubstitute with other judges the first ones already designated, or may make such other possible changes in the designations as he may deem proper. It is not impossible or improbable that judges coming from Cagayan or the Ilocos, in Northern Luzon, or from judicial districts in Mindanao, or from Leyte and Palawan, should be shuffling and commuting in order to take turns in sitting as temporary Justices of the Supreme Court.

"It is not impossible or improbable that for each group of cases there may be designated a different group of five judges to sit as Justices of the Supreme Court. As there are many cases coming from the People's Court to which section 14 of Act 682 may be applied, we would not wonder if all judges of first instance and cadastral judges shall be assembled in Manila, waiting for their turns to sit in different batches as Justices of the Supreme Court to try the respective cases for which they may be designated, thus paralyzing the courts of first instance and cadastral courts.

"The picture of the resulting situation will not be very encouraging if we have to express our judgment in the most euphemistic way.

"All what we have said in our dissenting opinion in this case regarding the inhibition of the Chief Justice and four Associate Justices, we reproduce here as valid against the constitutionality of the designation of the above-mentioned five judges as temporary Justices.

"If the Chief Justice and the said four Justices cannot be legally disqualified under the Constitution, if the first paragraph of section 14 of Act 682 is null and void as unconstitutional, if said Chief Justice and four Justices cannot disqualify or inhibit themselves from taking part in the consideration, deliberation, hearing, trial, and decision of this case and, under the Constitution, they are duty bound to continue sitting in this Supreme Court for the purposes of this case, the logical consequence is that they cannot be legally replaced by the five judges designated to sit in this Court or by anybody else.

"It is our more considered opinion, based on a deep conviction, that in order not to violate the Constitution the Chief Justice and the four Justices alluded to should take part in all the proceedings of this case, and that the designation of the five judges to take their place in the Supreme Court is null and void and, as such, must not be given effect.

XI

"Section 4 of Article VIII of the Constitution provides:

" 'The Supreme Court shall be composed of a Chief Justice and ten Associate Justices and may sit either in banc or in two divisions unless otherwise provided by law.' "

"The proviso 'unless otherwise provided by law' cannot be interpreted as affecting the whole section as, otherwise, it will transgress the most elementary rules of literary semantics and will lead us to the most absurd consequences.

"The proviso applies exclusively to the provision authorizing the Supreme Court to sit in two divisions. As one of the members of the Constitutional Convention who had the opportunity and privilege of taking uninterrupted active part in the making of the Constitution, including section 4 of Article VIII thereof, we are in a position to state that the members of the Constitutional Convention had not the least idea of applying the proviso to any other provision of said section except the one relating to the authority of this Supreme Court to sit in two divisions.

"If our intention was to apply the proviso to all of the provisions of said section we could have expressed it directly and simply by placing the proviso at the beginning of the section, separated by a comma from all the remaining portions thereof. But that was not our intention. Our intention was to grant the legislative power only

the authority to permit or not to permit by law the Supreme Court to sit in two divisions. So we placed the proviso immediately after the provision it has to affect.

"The authority was limited as to whether or not the Supreme Court could sit in banc alone or also in two divisions. We never intended nor could have intended to apply the proviso to other parts of the section.

"For example, we did not intend to give the legislature power to enact a law which may provide that the Supreme Court should sit in banc or not, for it would be the height of inconsistency, absurdity, and folly to authorize the enactment of a law never allowing the Supreme Court to sit in banc.

"All collective organism created by the Constitution or by law, unless otherwise expressly provided, must be understood to act and function in banc. Such is the case of the Senate, of the House of Representatives, of the Commission on Appointments, of the Electoral Tribunals, of the Commission on Elections and, naturally, of the Supreme Court.

"It is so as a general and fundamental principle in all democratic institutions; and, if the principle would not suffice, the Constitution, in the case of the Supreme Court, makes it expressly compulsory that it should sit in banc.

"Section 10 of Article XIII of the Constitution provides:

" 'All cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme Court in banc, and no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court.'

"Therefore, if the proviso 'unless otherwise provided by law' in section 4 of Article VIII of the Constitution can not affect the provision of said section 4, concerning the power and authority of the Supreme Court to sit in banc, it is only logical to assume that it cannot go beyond or above, or further than, the remaining provision 'that the Supreme Court shall be composed of a Chief Justice and ten Associate Justices.'

"This means that this provision as to the composition of the Supreme Court, as far as Congress is concerned, must be considered as untouchable and sacred. To it may adequately be applied the Rizalian admonition: noli me tangere.

"This means that the Supreme Court must be composed of 'a Chief Justice and ten Associate Justices', not otherwise. Never otherwise. There shall not be more than 'a Chief Justice and ten Associate Justices'; but section 14 of Act 682 increases the number with five judges, or five additional temporary Justices. Instead of a membership of 11, as intended by the Constitution, there will be 16.

"The practical result of section 14 of Act 682 in the present case is to create, organize, form, or constitute a Supreme Court composed of six Associate Justices and five judges of inferior courts.

"In enacting Act 682, Congress, in effect, had flagrantly violated, or at least, to make it more lenient, amended section 4 of Article VIII of the Constitution, a thing that is not permissible from the point of view of our fundamental law.

"Under section 4 of Article VIII of the Constitution, a Chief Justice is an essential member of the Supreme Court. That member has been eliminated by Congress.

"Under the same section, ten Associate Justices are essential members of the Supreme Court. Congress has eliminated four of them.

"Under the same section, only a Chief Justice and ten Associate Justices may compose the Supreme Court.

Congress decreed that it shall be composed of six Associate Justices and five judges of inferior courts.

"Can there be a more flagrant violation of the Constitution?

XII

"The result of the action of Congress in enacting section 14 of Act 682 is to create, form, constitute and organize, in fact, a second Supreme Court.

"There is no way of avoiding the actual reality.

"Although apparently everybody is referring to the Supreme Court as just a single collective body, in fact, there are two Supreme Courts. This can not be denied unless we are crazy enough to deny our own existence or that in this world of ours truth and untruth, beauty and ugliness, life and death are mingled to make keener our physical, mental, and moral perception of how little we are when we are confronted with the infinite greatness of eternal ideas.

"In the first place, there is the Supreme Court composed of a Chief Justice and ten Associate Justices, created and functioning under specific provisions of the Constitution. That is what we may designate as the Supreme Court No. 1.

"In the second place, there is a Supreme Court as created and organized under the authority of section 14 of Act 682, composed of six Associate Justices, without a Chief Justice, and five judges of inferior courts. This we may designate as the Supreme Court No. 2.

"The existence of two Supreme Courts, and more specifically, that of the Supreme Court No. 2, because its presence has made possible the existence of two Supreme Courts, is also a clear and flagrant violation of the Constitution, because it only authorizes the existence of 'one Supreme Court.'

"Section 1 of Article VIII of the Constitution provides:

" 'The judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.'

XIII

"Immovability is one of the essential and indispensable characteristics of our system of administration of justice as established by the Constitution.

"Such characteristic is considered imperatively necessary to maintain the judicial independence and to enable courts and judges to perform their duties with impartiality and with that austere dignity and firm moral equanimity which must naturally be expected of men who, besides having a full understanding of the greatness and solemnity of their official functions, amounting to that of a veritable mission, feel secure and independent in their position and do not have to render any accounting for their acts to any one except to the supreme judgment of their own conscience.

"The principle of immovability is expressly sanctioned in section 9 of Article VIII of the Constitution, which provides that 'the members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office.'

"As regards the members of the Supreme Court, they cannot be removed from office except on impeachment and according to the solemn proceedings provided in Article IX of the Constitution.

"The Constitution has guaranteed, not only the tenure of office of judicial officers until they reach the age of seventy years, but that they cannot even be transferred to a district other than the one to which they were appointed, except only as provided by the Constitution itself.

"Section 7 of Article VIII of the Constitution provides:

" 'No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court. The Congress shall by law determine the residence of judges of inferior courts.'

"This constitutional guarantee protects not only judges of first instance but also judges of municipal and justice of the peace courts. If other courts inferior in category to the municipal and justice of the peace courts are created, the judges thereof will also be protected by the same constitutional guarantee: to have a definite residence and not to be transferred to another district unless with the approval of the Supreme Court.

"Section 14 of Act 682 violates the principle of judicial immovability and transgresses against the principle of judicial independence.

XIV

"The Justices of the Supreme Court may only be removed from office by impeachment as provided by the Constitution itself.

"The disqualification provided in the first paragraph of section 14 of Act 682, in effect, provides for the partial removal of the affected Chief Justice and Justices without the benefits and guarantees of an impeachment proceeding.

"The removal is partial, because they are actually removed from office in regard only to the cases from which they are inhibited by disqualification. Whether partial or total, the removal is null and void because it runs counter to the Constitution.

"A justice of the peace court of the smallest town can not be transferred to another town without the approval of the Supreme Court. But section 14 of Act 682 removes the Chief Justice and four Associate Justices from their functions in the case, and others of the same class, summarily and without this removal being passed upon even by the Supreme Court itself. Not even an executive fiat, ukase, or decree is necessary. Only a motion or, at least, a mere call of attention by a litigant is necessary.

"Do Justices of the Supreme Court have less rights and principles 'than judges of municipal and justice of the peace courts?

XV

"Section 14 of Act 682 is premised on a wrong philosophy as to the nature of a judicial office.

"What was the object of providing in the first paragraph thereof of for the disqualification of the Chief Justice and the four Associate Justices affected thereto? Is it because Congress would not trust them to do justice in the cases concerning which they are disqualified?

"Is it because Congress believes that the people will not accept the judgment of said Chief Justice and said Associate Justices in the cases referred to as the expression of their most conscientious judgment?

"That lack of faith in said Chief Justice and four Associate Justices is unfounded and only shows the most unjustifiable inconsistency on the part of the authors of section 14 of Act No. 682.

"Since said Chief Justice and four Associate Justices were appointed by the President of the Philippines and their appointments were promptly approved by the Commission on Appointments, a constitutional organization representing both houses of Congress, the Senate and the House of Representatives, Congress has absolutely no reason why it should not have implicit faith in said judicial officers.

"We do not see why the people should not have full confidence that said Chief Justice and four Associate Justices will do their duty faithfully, loyally, impartially, in accordance with law and with the imperative dictates of their own conscience. Their appointments and the confirmation of the same should be taken as an official consecration. When they accepted their appointments, they fully knew that they accepted a high mission for life. Under such circumstances all presumptions that they will do their duty should be favored. If they fail to do their duty, disqualification by law is not the proper remedy. It is impeachment as provided by the Constitution.

"But there is absolutely not the least hint of any reason that could justify their being disqualified and there is absolutely no reason why any doubt should be cast on their actuation in this case or any other case.

"When they accepted their appointments, in fact, in taking their oath of office, they made a solemn vow to dedicate their life in the service of justice, and when a man feels the spell of justice the whole world must rely on him.

"Many years ago we appeared in a civil case tried in the Court of First Instance of Manila. After the trial, Judge Pedro M. Sison, who was presiding over the tribunal, publicly, in open court, in the presence of the litigants and all the attorneys, instructed the undersigned to draft the decision in the case. While our client was visibly elated, the opposing party and counsel could not hide their consternation. It was expected that the decision will be rendered in favor of our client. The next day we handed the draft of the decision to Judge Sison who signed it without making any amendment or correction. To the surprise of everybody, except ourselves, the decision was rendered against our own client.

"The temptation to write the decision in favor of our client was indeed great and almost invincible. We had at stake in the case our reputation as attorney-at-law, the goodwill of our client, substantial legal fees. It was not a very clear case. We could have written a defensible decision in favor of our client. But over and above all these considerations, there was our devotion to justice and the imperative mandate of our conscience. We did not hesitate even from the very beginning what decision to write, although during the whole day and whole night before we concluded drafting the decision, we were frequently assaulted by the impulse of writing what would better serve the interests of our client and of our own.

"It is because once you feel the charming spell of justice you will feel it stronger everyday, to such effect that you will accept sweetly any personal sacrifice to be true to her. In the same way as you are ready to face all dangers to conquer the heart of the lady of your dreams or a mother will accept all kinds of sufferings to insure the happiness of her child, a person enamored with justice and consecrated to her noble service will show all kinds of abnegation to make her always triumphant. There is a rapturous glory in serving her that makes one forget every other thing else.

"Ehrlich says that 'there is no guarantee of justice except the personality of the judge.' (Preie Rechtsfindung and freie Rechtswissenschaft.) The President of the Philippines and the Commission on Appointments decided that the Chief Justice and the four disqualified Associate Justices have the personality that guarantees justice. The validity of that decision has not been disputed. It has been accepted by the whole people. It carries with it a kind of popular injunction, sacred in a democracy, and cannot be reversed except by impeachment proceedings instituted by the House of Representatives and tried by the Senate. The Constitution does not authorize any other procedure. Until they are finally removed by impeachment, they are entitled and duty-bound to exercise their constitutional

functions, prerogatives, and powers in the present case; and any action that may have the effect of disqualifying them or depriving them of the opportunity to take part in the disposition of this case, or in replacing them, although temporarily, with judges of inferior courts, is a flagrant transgression of the Constitution.

XVI

"Let no one be mistaken that in anything we say in this opinion any reflection or slur against any of the affected five judges is intended. With all and each of them we are bound with ties of the purest and most profound personal respect and admiration. We are among the first ones to recognize that they possess all the personal qualities to entitle them to sit with honor in this Supreme Court or in any other supreme court in the world. Let it be understood that our paramount and only concern is that our Constitution be obeyed.

"Nowadays much attention is given to the serum aca, developed by Bogomoletz, the sexagenarian Russian scientist, hailed as the veritable elixir of youth, intended to make those benefited by it enjoy the traditional longevity of the inhabitants of Abkhasia, a not well-known city near the Black Sea. The seeking of youth is an old urge that has been spurring humanity. For attaining it, the legendary Dr. Faustus of the Goethian drama had even gone to the extreme of bartering his own soul to the devil. And after Columbus-discovered the New World, many traversed the Atlantic and went to the new vast empire in quest of the fountain of perpetual youth. Although all efforts have failed to find it, it is in the New World where the most marvelous device for keeping a youthful, healthy, and vigorous nation was perfected: the Constitution of the United States of America. That great document is the source of the dynamic youthfulness which enabled America to attain that greatness which is the most amazing spectacle of modern political history. As long as America sticks to her Constitution and keeps faith with the principles and guarantees therein contained, so long shall America continue showing the inexhaustible energy that only a nation endowed with all the vigor of youth can show. Ours is a young nation, but it will soon be a decrepit one unless we abide by all the provisions of our Constitution, the only legal, moral, and political source of national vitality, the strongest foundation of our nationhood.

"So long as we abide by the principles, ideals, and precepts embodied in our Constitution, we may look to the future with confidence. Science may and will usher the world in new eras. The age of uranium isotopes, of plutonium and other fission products, may be supplanted by the era of cosmic ray, unravelling new riddles of the universe and placing in man's hands unsuspected new tremendous powers to make him a veritable king of the creation. With such powers, man might boastfully claim that he has ceased to be the slave of nature to become the master of the physical world surrounding him. Those powers may be used for good and for bad, to build or to destroy, to metamorphose and to metaontose the physical world, to offer conveniences and luxuries to make happy peoples and nations, or for the wholesale annihilation of great human conglomerations. The new tremendous powers will create new menaces and dangers to our national security and well-being. But so long as the reign of law remains supreme, we have nothing to be afraid of. In order that law may continue reigning with absolute and indivisible authority, it is necessary that all the component parts of mankind should abide by the pledge of obeying it. It is the obligation of our government and our people, in that scheme of universal moral duty, to see to it that the law of the land be kept in condition to meet successfully all attacks and assaults, all defiances and challenges. Let us not forget that the Constitution is the basic and paramount law of our land.

"Supposing that the material world should have the power to will and decide to disregard the universal law of gravitation, the laws of centrifugal and centripetal forces, the laws of cohesion and fission, or any other law which forms part of the physical constitution which rules the behavior of matter and energy, the resulting cosmic catastrophe will certainly defy the wildest imagination. It is enough to say that the harmony and symmetry we are beholding in the movements and processions of the stars and other heavenly bodies shall be replaced by a cosmic anarchy; and all that indescribably beauty of nature, which is one of the strongest reasons why we feel it worthy to

cling to life, shall be no more and be substituted by the most horrid disorder in the midst of universal disintegration.

"The physical world is not free to disregard the laws that are embodied in its constitution, but peoples, being agents of free will, are at liberty to ignore and even to trample upon their own constitution. Beset by opposing and contradictory tendencies, they may choose to follow the way more suited to a collective harakiri by eliminating the legal bridles established in their fundamental laws. Shall we, shall our people disregard the Constitution which embodies the collective philosophy of our national life? Are we rash enough to invite the resulting political disintegration? Are we so reckless as to drive our country to the brink of juridical disaster? Shall we plunge ourselves into that moral abyss where the Constitution is replaced by unconstitutional acts, processes, and practices, or start lawlessness?

"We do not expect or pretend that what we say here or what we have said or might say in other opinions to be acceptable or agreeable to others, would satisfy the good taste of many, or could or should be understood by everybody. Although the ideas we are expressing or trying to express appear in our mind with crystal-clear definiteness and precision, our ability to translate them into words is limited and language itself as a tool of expression is full of limitations. Besides, we are just beginning to learn English, a means of expression which in our early childhood we hated as a symbol of imperialism and one of the instruments of oppression of the political masters who forced upon our people their rule. Thanks to developments of recent history, only a few years ago we felt justified in beginning to revise our old deep-rooted attitude, when we saw that the same language can also be the instrument of our national freedom. That is the reason why very often we can hardly make a hint or vague suggestion of the concepts and thoughts boiling in our mind. But we hope that in a question of so momentous importance such as the one we are discussing, involving the Constitution, the Supreme Court, the judicial independence, and other vital principles, there will be enough persons who will understand us, not to make completely useless and futile the constitutional precept making compulsory that 'any justice dissenting from a decision shall state the reasons for his dissent' (sec. 11, Art. VIII, Constitution of the Philippines) which the authors of the Constitution adopted believing that the people will be benefited by knowing and preserving the reasons of dissenting opinions, as the validity of the doctrines and rules enunciated in the majority opinions of the Supreme Court can only be successfully and profitably tested by fully knowing the reasons of the Justices who disagreed with them.

XVII

"Not because our opinion will affect some of our more esteemed and respected friends, some of the finest citizens of our country, some of the best elements of humanity, shall we hesitate to unflinchingly express our honest opinion that they are sitting in this Supreme Tribunal in illegal usurpation of positions to which, under the provisions of our fundamental law, they are not entitled, because the positions are not vacant and still uninterruptedly occupied by men who were duly appointed and qualified and who cannot be replaced or displaced while they have not reached the age of seventy years, or been dismissed for grave misbehavior through solemn proceedings of constitutional impeachment, and have not rendered, in obedience to the implacable laws of nature, their inevitable tribute to the ghastly empress of the valley of eternal silence.

"Over and above all personal considerations, over and above all reasons of expediency or convenience, we must not shirk our part in upholding the precepts and mandates of our Constitution. We know that the immediate result of our theory, if the same is sustained, will be the ousting of the five judges above referred to from the positions they are illegally occupying in this Supreme Court. But no matter how much it may hurt us to express a conviction that will give such a regrettable result, we cannot help it for we must have to remain loyal to our oath of office and maintain supreme the Constitution as an indispensable cornerstone of the political, social and legal structure of our people. We will be recreant to our official duties if we should remain

unmoved, indifferent, passive, when, as in the present case, such a wanton assault has been launched in utter disregard of the Constitution, against the integrity, the independence, the stability, of the last and sturdiest bulwark of all rights and liberties in this country of ours, the Supreme Court.

"Let us not allow our high regard for Congress, our respect for the wisdom it ordinarily shows in the fulfillment of its legislative duties, our personal affection for the senators and representatives composing it and the high concept we have of their personal ability, of their intellectual stature, of their devotion to the best interests of the people, to blind us into accepting legislative infallibility in the enactment of section 14 of Act No. 682.

"The men composing Congress are made of common clay and, as children of men, are liable to commit mistakes and errors. Section 14 of Act No. 682 shows one of the greatest blunders that the legislative power has ever committed since democracy was implanted in our country. It is a blunder that has shaken in its foundations the highest tribunal of the country and, in fact, the judicial power itself. That blunder is a direct attack against one of the most vital organisms created by the Constitution as an essential part of a government that shall embody the ideals of the Filipino people, 'conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy.'

"As it happens to all persons and all human institutions, Congress has also, we must confess, its moments when it cannot see light. Even in the best windows of the most transparent crystal there are mullions and transoms which obstruct the passage of solar light. Homer sometimes slept. The brightest minds produced by humanity had been beclouded by concepts and ideas which successive generations, taught by time and experience, have found to be false. Even a physical error, scientifically demonstrable, was elevated for sometime to the category of an intolerant dogma for not accepting which Galileo was imprisoned after a famous trial. Because Congress failed to see light when it enacted section 14 of Act No. 682 is no reason why the members of the Supreme Court should blindly follow suit and refuse to see the light which Congress failed to see and which now is shown to us without any kind of obstruction. Of course, it is within the power of this Court to refuse to see light. But then the question is whether the Supreme Court must or must not do its duty. In our opinion, there cannot be two alternatives. There is only one path from which we cannot conscientiously swerve. Let us not allow the common man in the street to remind us: 'Walang bulag pa sa naghubulag-bulagan; walang pinaka bingi katulad ng nagbibingi-biñgihan.'

"To our mind, in the enactment of section 14 of Act 682, as we have shown, the violation of the precepts of the Constitution is so clear, so evident, so flagrant, that we must be actually blind not to see it. The violated constitutional precepts are specific, clear, unsusceptible to ambiguities and confusions. They do not belong to the great generalities the conduct and significance of which, according to Mr. Justice Cardozo, 'vary from age to age.'

"We conclude and vote that it be declared that: (a) Section 14 of Act 682 is null and void, being unconstitutional; (b) the Chief Justice and four Associate Justices who inhibited themselves to take part in this case are constitutionally qualified find duty-bound to intervene in this case; (c) the five judges of inferior courts designated to sit in this case in their place are doing so in illegal usurpation of positions which are not vacant and, therefore, they should be ordered to quit them; and (d) the Supreme Court cannot legally function as constituted in this case, under penalty of avoidance and nullity of all its actions in the same."

Since the above opinions have been written, we had occasion of re-stating our positions against the validity of section 14 of Commonwealth Act No. 682 in several cases.

The following is our written opinion, also unpublished, in the case of *People vs. Sison*, L-398:

"We object to the Chief Justice and four Associate Justices concerned inhibiting themselves from taking part in the cognizance of this case and, therefore, we dissent from the action taken by the Supreme Court in

authorizing, permitting, or consenting to the transfer of this case to the second or special Supreme Court created, organized, constituted, existing and functioning in accordance with section 14 of Act No. 682.

"The creation of said special Supreme Court, besides being null, void ab initio, and irretrievably and flagrantly unconstitutional, is essentially inimical to public interest, gives rise to confusion and chaos in Philippine jurisprudence, and is liable to shake public confidence in the administration of justice.

"The panegyrist of the Nippon system of government, under which a special criminal court was created during enemy occupation, may rest satisfied with the special Supreme Court brought to existence, if not to duplicate the abhorrent achievements which were strongly condemned in *Peralta vs. Director of Prisons*, G. R. No. L-49, at least, to sanction and perpetuate the judicial philosophy which promotes the organization of special courts or tribunals to try specific criminal cases in which the government or the state is interested in securing preconceived objectives, no matter how harmless, innocent, or well intended they may appear, as in the case of the special Supreme Court in question, or how pernicious, sinister, of evil-looking as the special criminal court under the Japanese regime.

"The promachoi of the insolent international fraud which was flung to our face and to the face of the whole world under the resounding name of Greater East Asia Co-Prosperity Sphere may relish in the revival and survival of the skewed and fascistic ideology underlying the organization of special courts to try special criminal cases in order to serve special state aims and purposes.

"The servile kudizers of the pretended efficiency of dictatorial systems may loudly extol the virtues of a law which, in the belief that it is meeting an unusual situation, unforeseen by the members of the Constitutional Convention, boldly supersedes express provisions of the Constitution, to create a second special Supreme Court to wrest and supplant the jurisdiction of the legitimate Supreme Court, existing and created under the fundamental law, on a group of important cases, in which the state is vitally interested. We cannot and we do not deny their perfect right and freedom to do so. But, at the same time, we believe that all those who, like us, are committed to the upholding of the tenets of democracy, liberty, and justice, as sanctioned and proclaimed in our Constitution and, at the cost of untold human sufferings and millions of lives sacrificed in the greatest holocaust known in human history, were consecrated in the United Nations Charter, should exert the most unstinted efforts to oppose all attempts to make their wrong ideology prevail, and must resist, repel and combat any usurpation of the constitutional functions and prerogatives of the Supreme Court.

"The evil effects of the existence of the special Supreme Court in question have been shown at the very beginning and from the very first decision ever rendered by said special Supreme Court. The first and only decision rendered so far by said special Supreme Court, the one in *Duran vs. Abad Santos* (G. R. No. L-99), advances legal doctrines which are in conflict with those adopted and sanctioned by this constitutional Supreme Court in the two *Teehankee* cases (Nos. L-101 and L-278). This is just the rumbling and ominous protasis of a judicial drama in which this Supreme Court, created and functioning under the Constitution, will set a line of legal and judicial principles, doctrines and rules which may and will be opposed by an antagonistic line of conflicting or contradicting principles, doctrines and rules set up by the special Supreme Court, created by legislative fiat and in pursuance of section 14 of Act No. 682. Both lines are supposed to be binding upon all inferior courts, upon all government agencies, upon all the people in general. Now the confusing and unanswerable question is: which line is to be followed? It is beyond our ability to answer. But this inability to answer the question does not make us immune from shuddering at the catastrophic consequences of the judicial chaos and anarchy which will be enthroned.

"Each line of decisions, with the corresponding cohort of legal doctrines, judicial principles, and judicial rules, shall be looked upon as the last work of court's wisdom and as final authority in our jurisprudence. Each one vying for acceptance, support and following. Each one pretending to represent the last, conclusive, permanent expression of legal truth. Each one pointed as a concrete symbol of the moral sense of our people, as a monument to the reign of law, as the happy reality of justice in action. But then the dual lines do not follow

parallel directions, where conflict is indefinitely avoided. The conflict is not even limited to points of contact in crossed directions. The two lines are running in diametrically opposite directions, and the decisions are clashing in open battle as two belligerent armies.

"Each Supreme Court, this one existing in accordance with the Constitution and the special Supreme Court created by legislative fiat in violation of the Constitution, shall emulate judicial leadership. The resulting confusion cannot be betoned enough. The highest tribunal has been created by the Constitution to settle finally all legal conflicts, all litigations, all differences of opinion among inferior tribunals. But who will settle the conflicts of opinion between two different, separate, opposing Supreme Courts, each one claiming to have the paramount authority and as the exclusive repository of the last word in Philippine law and jurisprudence?

"Both tribunals carry the appellation 'supreme.' Each one is by antonomasia 'supreme.' If they are really, they are reciprocally destructive. 'Supreme' means the highest, dominant, utmost, greatest, unexceeded, ultimate, last, final, pre-eminent, foremost, peerless. Therefore, logically, both cannot coexist simultaneously. They are mutually self-repelling, self-annulling. It is the extreme of betise to admit the coexistence of two 'supremes' in the same category or order of things. The essential characteristic of a 'supreme' thing is unicity, oneness, uniqueness. It is repugnant for it to accept a duplicate, a rival, a co-equal. It cannot have a match, a mate, a peer. No matter of logodoedaly may justify the coexistence of twin 'supremes'. The wildest stochastic adventure in the realm of fiction and fantasy will be unable to hunt such a mental teratologic product.

"In support of our stand against the constitutionality of section 14 of Act No. 682 and of this dissent, we reproduce here our dissenting opinions in *De la Rama vs. Misa* (G. R. No. L-263), one dated February 27, 1946, and the other dated April 1, 1946.

"For the sake of truth, we wish to make it of record that there are Justices who are of opinion that section 14 of Act No. 682 only grants the affected Justices a discretionary power to inhibit themselves, if they choose it to be wise, and, therefore, does not entail a legal and obligatory disqualification, although we do not agree with such interpretation. And there are several Justices who are ready to support with their votes our stand against the constitutionality of said section 14 of Act No. 682 but decided not to cast said votes because we failed to obtain the support of the two-thirds required by the Constitution in order that a law may be declared unconstitutional. (Art. VIII, sec 10, of the Constitution.)"

The decision in this case, in settling definitely a thorny and long discussed question, like our decision in the case of *Tavora vs. Gavina*, L-1257, and resolution upon the motion for reconsideration filed therein, sets a new landmark in the progress towards the affirmation of the principle of stability as one of the essential safeguards of judicial independence.

The Supreme Court has always been reluctant to use the tremendous power to annul a law or provision of law. Whenever possible, it has decided all doubts in favor of constitutionality. With all presumptions of validity in favor of the present decision, after mature deliberation, the Supreme Court had arrived at the conclusion that there is no other alternative than to exercise its power to declare the section in question null and void, being violative of the fundamental law.

The power to set aside a statute in conflict with the Constitution is inherent in the judiciary. The first enunciation of this far-reaching doctrine, more than any other achievement in his outstanding judicial career, entitled Chief Justice Marshall to the greatness in American juridical history accorded him by his and succeeding generations. Because the doctrine lacked support in the specific provisions of the American Constitution, and it was rather an implementation thereof, the subject continued to be debated by jurists even long thereafter. At the time the Philippine Constitution was being framed, the controversy was still alive. To put an end to it in our country, the Convention invested expressly the Supreme Court the power to invalidate by a two-thirds majority unconstitutional laws or provisions of law. In the United States, the Supreme Court exercise the power by simple

majority. The enduring benefits derived by our people from the fact that Congress may not enact laws transcending the bounds of the Constitution and that transgressions of the fundamental law may be checked by the Supreme Court, as the ultimate guardian of the Constitution, are to be attributed to the initiative, creative genius, foresight and boldness of Chief Justice Marshall, who can justly be considered as one of the benefactors of humanity. Contrary to the opinion of superficial minds that measure the stature of jurists by their ability to clutter their intelligence by a vast store of old decisions, precedents and authorities, that buttress their works by numerous citations, exhibiting painstaking research and great capacity of memory, that have ready solutions to current legal problems by fitting to them maxims evolved by former judges and jurists facing problems of generations past, the truly legal luminaries are those whose intellectual and moral grandeur is built on original contributions to jurisprudence and the progress of law. It was said that Chief Justice Marshall, upon enunciating new principles of law, left to Justice Story the task of research to find precedents and authorities to support them. Originality and universality are the main characteristics of the work of great men in the field of law and, in fact, in all other fields of human endeavor. Thales, Pythagoras, Hippocrates, Socrates, Aristotle, Archimedes, Christ, Thomas Aquinas, Grotius, Galileo, Phidias, Praxiteles, Bach, Mozart, Shakespeare, Paracelsus, Michaelangelo, Da Vinci, Columbus, Magellan, Kepler, Newton, Cervantes, Lavoisier, Rembrandt, Linnaeus, Voltaire, Darwin, Pasteur, Edison, Nikola, Tesla, Mendel, Faraday, Madam Curie, Rizal, Gandhi, Brandeis, Franklin, Delano Roosevelt, Einstein, are among the towering figures of humanity because, by their initiative, creative genius, redoubtable courage; high ideals and foresight, they have contributed something original and of widespread or universal effects in their respective spheres of activity. They are the pathfinders, the trail blazers, the leaders that discovered new worlds and opened new horizons to mankind. One of them is Justice Holmes who was known as the "Great Dissenter," because his legal ideas happened to be too far advanced to be understood and followed in the stage of legal development of his time.

We are not to end this opinion without yielding to the temptation of quoting the following editorial of The Lawyers' Journal of September 30, 1946:

"COLLABORATION AND THE SUPREME COURT

"Unique and to that extent unparalleled in the history of the judiciary of democratic countries is the recent designation of seven judges of first instance to sit without much ado in the Supreme Court. The object is to enable them to hear in place of seven Justices, including the Chief Justice, only certain collaboration cases. The move brings to an amusing, if not a bit ludicrous, climax the judicial farce that has been going on for some time in the Philippines in the name of collaboration. For one thing, it makes this country the laughing-stock of the world; for another, it holds up to ridicule and contumely our highest tribunal which has been and should always be the depository of our greatest respect and confidence.

"Why seven Justices should inhibit themselves or allow themselves to be inhibited from hearing so vital, fundamental, and transcendental questions as suspended allegiance, suspended sovereignty, and change of sovereignty, without regard to the persons involved, is beyond the comprehension of the ordinary citizen. No less is it beyond the comprehension of the ordinary lawyer because he knows that there is nothing in the Philippine or American Constitution that empowers Congress to prohibit certain Supreme Court Justices from hearing cases of paramount importance. On the contrary, our Constitution categorically confers on the Supreme Court the right to 'review, revise, reverse, modify, or affirm * * * final judgments and decrees of inferior courts.' There is not the slightest hint or suggestion that in doing so the Supreme Court must be reconstituted or packed with non-members.

"Where did so extraordinary and unheard-of authority to designate 'temporary justices' emanate? Strangely enough, from a simple act of the then moribund Commonwealth Congress, some of whose leading members were themselves alleged collaborators. The act created what is known as the People's Court and its adjunct, the

Office of Special Prosecutors. Before the High Tribunal the question of the law's constitutionality was raised once collaterally, but the Supreme Court, presumably out of delicacy, declined to pass upon it squarely.

"Posed Chief Justice Marshall: 'If an act of the legislature, repugnant to the Constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law?' It's a pity the great American jurist did not answer his own question with the backing of his learning and authority, because there is no doubt that it has a direct and important bearing on the present case. However one may look at it, the act is utterly repugnant to the Constitution.

"Reads section 14 of the People's Court act: 'Any Justice of the Supreme Court who held any office or position under the Philippine Executive Commission or under the government called Philippine Republic may not sit and vote in any case brought to the Court * * * in which the accused is a person who held any office or position under either or both the Philippine Executive Commission and the Philippine Republic or any branch, instrumentality and/or agency thereof?'

"The recurring question is: Where did the defunct Congress derive its authority to limit or restrict the power of a constitutionally co-equal body? Certainly not from the Constitution which alone can confer it. 'Congress and the President, like the courts, possess no power not derived from the Constitution.' So ruled the United States Supreme Court. On the accepted theory of separation of powers, the Supreme Court stands or should stand supreme in all judicial matters as well as in all matters affecting the judiciary. So careful were the framers of our Constitution in safeguarding the independence of the judiciary that they even banned the old 'rigodon de jueces.' Enjoins the Constitution: 'No judge appointed to a particular district shall be designated or transferred to another district without the approval of the Supreme Court.' If the mere transfer of a district judge requires more than legislative or executive approval, how much more when it comes to replacing or substituting Justices who were facing no judicial investigation or impeachment?

"And yet, here is a law, supposedly valid, which not only circumscribes the power of the Supreme Court, but what is worse casts a gratuitous reflection on the honesty, integrity, and impartiality of its members. Here is a law which grants authority to the Chief Executive to designate even cadastral judges to sit as 'temporary justices' in the Supreme Court and supplant the bona fide members without the courtesy of denunciation or impeachment. With all his strength and popularity the late President Roosevelt did not wield half that power despite the mandate he had received from the electorate and the willingness of the American Congress to help him push through his New Deal program.

"Supposing all the Justices had served during the enemy occupation. Would not the law have the effect of destroying a constitutional body by setting up through presidential designation a temporary Supreme Court with temporary members who may not even be legally qualified to sit there and whose designation need not have the approval of the Commission on Appointments, another constitutional body? Imagine a Supreme Court thus constituted? As a matter of fact, the new 'Justices' now form the majority and can easily overrule the four remaining Justices. Their verdict will be cited as the Supreme Court's decision when in reality it is not.

"Another feature of the Act, which some judges and practising attorneys believe clearly violates the Constitution is that under it two men charged with the same crime must be judged by two different bodies of the Supreme Court: one real, permanent, and constitutional; the other, temporary and unconstitutional. It violates the equality-of-treatment clause contained in the first section of the Bill of Rights. Provides this clause: 'nor shall any person be denied the equal protection of the laws.'

"In the instance given, how can there be equal protection of the laws when a fictitious or temporary Supreme Court with conceivably prejudiced members, disguised by statute as Justices, will pass judgment on your case if you served under the Philippine government during the enemy occupation, whereas a person who did not serve will be judged by the true, de jure, Supreme Court?

"Those who have studied the history of the Federal Supreme Court may well wonder if so outspoken and independent a body would have tolerated so flagrant an encroachment on its powers and prerogatives to its obvious shame and humiliation. They may well wonder and even seriously doubt if that august and courageous body would have sanctioned tacitly the validity of an act which, in practice, tends to abolish it by the simple strategy of creating in its stead a temporary body whose members have not and possibly could not have legally qualified as such."

FERIA, J., dissenting:

I dissent.

The legislative powers of Congress granted by the Constitution on all matters are general and absolute, subject only to the limitations placed upon them on some particular subject, and therefore Congress is free to legislate on matters not expressly or by necessary implication restricted by the Constitution.

"The rule of law upon this subject appears to be that, except where the Constitution has imposed limits upon the legislative power, it must be construed as practically absolute, whether it operates according to natural justice or not in any particular case * * *. Any legislative act which does not encroach upon the power apportioned to the other departments of the government, being prima facie valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the Constitution, and the case shown to come within them." (Cooley's Constitutional Limitation, 7th ed., pp. 235, 237.)

To the question, whether or not Congress had power to add to the pre-existing grounds of disqualification of a Justice of the Supreme Court, the affirmative is evident, because there is no limitation placed by the Constitution on the general legislative power of Congress on the matter.

It is self-evident that a law on disqualification of judges, provided for in sections 8 and 608 of the old Code of Civil Procedure and incorporated in Rule 126 of the Rules of Court, is not a law on pleading, practice, and procedure, but a substantive law. The provision of the old Code of Civil Procedure deals not only with pleading, practice, and procedure, but also with substantive laws, such as those relating to adoption, statutory construction, guardianship, causes of disqualification of judges, and others; and yet most of them have been substantially, if not literally, incorporated in the Rules of Court, for convenience's sake, and not because this Court has power to alter or modify them. And our Constitution does not contain any limitation on the power of Congress to legislate on the matter. On the contrary section 2, Article XVI of the Constitution provides that "All laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines, thereafter such laws shall remain operative, unless inconsistent with the Constitution, until amended, altered, modified or repealed by the Congress of the Philippines." As said section 8 of the old Code of Civil Procedure as incorporated in Rule 126 is not inconsistent with the Constitution, and the majority admits it in stating in the decision that "the framers of the Constitution deemed it fit, right and proper that said provisions shall continue to govern the disqualification of judicial officers", it follows that the Congress has power to enact section 14 of the People's Court Act adding thereto other causes of disqualification.

The same is true even assuming that the laws providing for disqualification of judges are rules of pleading, practice and procedure, and have been repealed as statutes, and declared Rules of Court subject to the power of the Supreme Court to alter or modify the same, according to section 13, Article VIII, of the Constitution, because the same section 13 provides that "Congress shall have power to repeal, alter or supplement the rules concerning pleading, practice and procedure.

(a) It is argued in the decision of the majority that section 14 of the People's Court Act is repugnant to Article VIII of the Constitution, which provides in its section 4 how the Supreme Court shall be composed and how it may sit,

and in its section 9 ordains that they "shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office."

This contention is not tenable because it is based on a wrong premise. The Constitutional provision that the Supreme Court shall be composed of eleven Justices who may sit either in banc or in division, has no bearing on the question of disqualification of some members therein; and the designation of a judge of the lower court to sit or temporarily act as a member of the Court in a particular case does not affect the composition of the Court. By such designation, the members of the Supreme Court is not increased and the sitting in banc or division is not thereby affected, because the judge designated takes the place of the disqualified member in the disposition of the case in which the latter can not take part. And the provision of section 9 of said Article VIII that the members of the Court shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office, is not inconsistent with the designation of another to temporarily act in the place of the member disqualified, because the latter is not thereby removed or deprived of his rights and emoluments as such, and has the right to continue exercising his powers and duties in all other cases in which he is not disqualified to act.

A contrary construction of the above-quoted provision of sections 4 and 9 of Article VIII would lead to the absurdity that Congress can not absolutely legislate on the matter of disqualification, and the existing laws on the matter, such as the disqualifications provided for in Rule 126, can no longer be enforced after the approval of the Constitution, because it would be repugnant thereto. It is evident that "due process of law requires a hearing before an impartial and disinterested tribunal. Every litigant, including the State, in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and the law intends that no judge shall preside in a case in which he is not wholly free, disinterested, impartial, and independent. To this end reasonable regulations must be made by the legislature in the matter of prescribing certain disqualifications of a judge to act." (30 American Jurisprudence, section 53, p. 767.) The provisions of the Constitution that so many members shall compose the Supreme Court who may sit in banc or in division, and shall hold office during good behavior until they reach the age of seventy years old or become incapacitated, does not mean that they shall sit uninterruptedly as such in all cases, at all cost, and without any exception, for it would be an absurdity to presume that each and every one of them must necessarily and uninterruptedly act in each and every one of the cases submitted to the Court, irrespective of whether they are physically or legally incapacitated or disqualified to act.

Under such farfetched contrary construction, the provisions of section 8 of the old Code of Civil Procedure on disqualification of judges, incorporated in Rule 126 of the Rules of Court, must be considered as repealed by the Constitution; for if the Constitution prohibits the enactment by Congress or some other law-making power of a law providing for disqualification of judges including Justices of the Supreme Court, said Rule 126 can not be continued in force by section 2, Article XVI of the Constitution, on which the majority relies to hold that said disqualifications continue in force. Because said section 2 prescribes that only laws then in force which are not inconsistent with the Constitution shall continue in force until the inauguration of the Commonwealth, and remain operative thereafter. It reads as follows: "All laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines; thereafter, such laws shall remain operative, unless inconsistent with this constitution, until amended, altered, modified, or repealed by the Congress of the Philippines." On the other hand, if the provisions on disqualification of judges contained in Rule 126 are not inconsistent with the Constitution and they are continued in force by section 2, Article XVI thereof, they may validly be amended, altered, or modified by Congress as expressly provided therein; and therefore section 14 of the People's Court Act, which is but an amendment thereof by Congress in so far as treason cases are concerned, can not be repugnant to the Constitution.

The other ground advanced in the decision in support of the conclusion that section 14 of the People's Court Act is unconstitutional, is that it deprives the Supreme Court of its appellate jurisdiction, among others, over certain cases where the penalty may be death or life imprisonment, conferred by section 2 (4) of Article VIII of the Constitution. According to the decision, the appellate jurisdiction of the Supreme Court may be exercised only by the Chief Justice and ten Associate Justices, and sections 4 and 5 of said Article VIII do not admit any other composition of the Supreme Court; and "to disqualify any of these constitutional component members of the Court * * * is nothing short of pro tanto depriving the Court itself of its jurisdiction," for the deprivation of a member of the Court of his judicial powers is equivalent to the deprivation of powers of the Court itself.

This argument or contention is clearly untenable, because it is based on a misconception or confusion of the jurisdiction of the Supreme Court as an institution with the judicial powers of its members. There is a self-evident distinction between the Court as an institution, and the members who preside the Court in order that the latter may act. The Supreme Court as an institution, is different from the members thereof. The Supreme Court may exist with its jurisdiction even though no Justice has yet been appointed to preside it. The individual members of the Supreme Court may be disqualified to act by reason of relationship with the parties or interest in the subject matter, etc.; but the Court can not become disqualified. Even though one or more of its members are incapacitated physically or disqualified legally to act, the Court may still exercise validly its own jurisdiction. The members of the Court individually have no jurisdiction to try and decide cases, but the jurisdiction belongs to the Supreme Court as an entity or institution. Therefore the disqualification as well as the physical incapacity of one or more of the members of the Court, does not and can not deprive the Supreme Court of its jurisdiction.

In case of physical incapacity or legal disqualification of some members of this Court and there is no quorum, the Governor General before and the President now are authorized by Congress to designate judges of the lower court to sit temporarily in the Supreme Court. And although the majority of the members of the Court are not in such cases regular but designated temporarily to sit thereof in a particular case, the Court so constituted is the same Court established or recognized by the Constitution exercising the same jurisdiction. The framers of the Constitution, in providing that the Supreme Court shall be composed of one Chief Justice and ten Associate Justices, could not have the intention of inhibiting Congress from authorizing the designation of judges of the lower court to act temporarily in case some of the regular members of the Court are, physically or legally, disqualified to act, and the able or qualified ones are not sufficient to form a quorum and act; otherwise the functions of the Court in such cases would be paralyzed for a certain period or perhaps for a long period of time.

(b) There is nothing to support the conclusion in the decision that Congress can not empower the President to designate a judge to sit temporarily as a member of the Supreme Court in case of disqualification of some members thereof, based on the ground that section 9, Article VIII of the Constitution requires that members of this Court must be appointed by the President with the approval of the Commission on Appointments. Because it is obvious that said section 9, Article VIII, refers to regular members of the Supreme Court, and does not apply to judges designated temporarily to act in certain cases as Justices of the Supreme Court in lieu of those disqualified, in order that this Court may have a quorum and act. To require the confirmation by the Commission of the judge so designated by the President would be to make the designation tardy for the purpose intended, and the person so designated regular member of the Supreme Court thereby increasing the number of Justices of this Court.

(c) The same may be said as to the argument that judges of the lower courts can not be designated by the President to sit and act temporarily as Justice of the Supreme Court, because they do not have the qualifications which, according to the Constitution, a person must have in order that he may be appointed Justice of the Supreme Court. That section 6, Article VIII, of the Constitution, which prescribes that "no person may be appointed member of the Supreme Court unless he has been five years a citizen of the Philippines, is at least forty-five years of age, and

has for ten years or more been a judge of record or engaged in the practice of law in the Philippines," refers to regular members of this Court, is too clear to need any demonstration. As the Constitution requires that a regular member of the Court must have such qualification, and is silent on the qualifications of those who may be designated by the President to act temporarily in lieu of one of the members disqualified, it evidently follows that Congress had power to authorize the President to designate any judge of the lower court although he may not have the qualifications of regular members of the Supreme Court, not only because of the maxim *inclusio unius est exclusio alterius*, but because of the principle that Congress has ample and general legislative powers on all matters, unless they are limited or restricted by the Constitution expressly or by necessary implication.

Furthermore, as judges of the lower courts must have previously been appointed as such by the President with the approval of the Commission on Appointments, it is to be presumed that they are qualified not only for the position for which they are appointed, but also to be designated by the President to sit temporarily as Justices of the Supreme Court by the President as contemplated by law, and it may also be presumed that the President will only designate, among them, those who, by ability and experience, are better qualified.

If, as contended, an act of Congress that empowers the President to designate judges of the lower court for that purpose is repugnant to the Constitution, because said judges do not have the qualifications a member of the Supreme Court should have, and their designations are not approved by the Commission on Appointments, section 8 of the old Code of Civil Procedure incorporated in Rule 126 could not be applied to Justices of the Supreme Court and enforced, contrary to what the decision holds in order to avoid the absurdity which necessarily follows from the majority theory. Because section 2 of Commonwealth Act No. 3, a complementary provision of Rule 126 as applied to Justices of the Supreme Court, which authorizes the President to designate judges of the Court of Appeals to sit temporarily as Justices of this Court in case of disqualification of some members thereof, should have to be considered as repugnant to the Constitution under the same theory. If Rule 126 of the Rules of Court and section 2 of Commonwealth Act No. 3 are not inconsistent or repugnant to the Constitution, there is absolutely no reason why section 14 of the People's Court Act No. 682 should be considered as unconstitutional.

I believe that the provisions of section 14 under consideration are objectionable and defective. First, because they assume that the Justices who have occupied positions during the Japanese occupation are disqualified, either because they are presumed to be partial to indictees who had occupied offices or positions during the Japanese occupation, or because they would be in an embarrassing position should they vote for defendant's acquittal; and second, because they empower or enable the President of the Commonwealth before, and of the Republic now, to select and designate the judges of the inferior courts which should temporarily sit as Justices, with the qualified members of this Court, in each particular treason case, instead of empowering the President to designate, once and for all, the judges who should sit temporarily as Justices in all cases in which the Justices of this Court are disqualified for having occupied public office during the Japanese occupation. But I can not, to my regret, subscribe to a decision which declares said section 14 unconstitutional.

The advisability or unadvisability, as well as the reasonableness or unreasonableness of a law is for the legislative and not for the judicial body to determine, unless the unreasonableness constitutes a violation of the constitutional limitations. Courts should construe and apply the law, but can not legislate or encroach upon the legislative power of the government. As Chief Justice Marshall said in the celebrated case of *McCulloch vs. Maryland*: "When the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground." (20 Law, ed., p. 309.) It is a maxim that a law must be upheld unless its unconstitutionality is so clear as to have no reasonable doubt on the subject.

Petition to have section 14 of Commonwealth Act No. 688 declared unconstitutional is denied.

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