

ONOFRE P. GUEVARA, PETITIONER, VS. RAOUL M. INOCENTES, RESPONDENT.*G.R. No. 25577. March 16, 1966*

Ponente: BAUTISTA ANGELO, J.

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This decision is written in keeping with the statement we made in our resolution dated February 16, 1966.

Petitioner was extended an ad interim appointment as Undersecretary of Labor by the former Executive on November 18, 1965, having taken his oath of office on November 25 of the same year, and considering that the ad interim appointment for the same position extended to respondent by the incumbent Executive on January 23, 1966 is invalid in spite of Memorandum Circular No. 8 issued by the latter on the same date declaring all ad interim appointments made by the former Executive as having lapsed with the adjournment of the special session of Congress at about midnight of January 22, 1966, petitioner brought before this Court the instant petition for quo warranto seeking to be declared the person legally entitled to said office of Undersecretary of Labor.

The petition is predicated on the following grounds: (1) under Article VII, Section 10(4) of the Constitution, petitioner's ad interim appointment is valid and permanent and may only become ineffective either upon express disapproval by the Commission on Appointments or upon the adjournment of the regular session of Congress of 1966; (2) here there has been no express disapproval by the Commission on Appointments because the same has never been constituted during the special session called by President Marcos in his Proclamation No. 2, series of 1966; and (3) there has been no adjournment of the Congress as contemplated in the Constitution because (a) the aforesaid special session was suspended by the House on Saturday, January 22, 1966 at 10:55 p.m. to be resumed on Monday, January 24, 1966 at 10:00 a.m.; (b) the resolution approved by the Senate on January 23, 1966 at past 2:00 a.m. for adjournment sine die is not the adjournment contemplated in Article VII, Section 10(a) of our Constitution; (c) the suspension by the House or the adjournment by the Senate to resume the session on January 24, 1966 at 10:00 a.m. meant the end of the Special session and the start of the regular session as a continuous session without any interruption; and (d) the phrase "until the next adjournment of the Congress" must be related with the phrase "until disapproval by the Commission on Appointments" so that the adjournment contemplated should refer to a regular session during which the Commission on Appointments may be organized and allowed to discharge its functions as such.

Respondent, on the other hand, set up the following defenses: (1) petitioner's ad interim appointment lapsed when Congress adjourned its last special session called under Proclamation No. 2 of President Marcos; (2) an ad interim appointment ceases to be valid after each term of Congress and so petitioner's appointment must have lapsed as early as December 30, 1965; (3) petitioner's ad interim appointment, as well as others made under similar conditions, is contrary to morals, good customs and public policy, and hence null and void; and (4) petitioner's appointment is void in the light of the doctrine laid down in *Rodriguez, Jr. vs. Quirino*, G. R. No. L-19800, October 28, 1953.

After due deliberation, the Court resolved that the ad interim appointment extended to petitioner on November 18, 1965 by the former Executive lapsed when the special session of Congress adjourned sine die at about midnight of January 22, 1966, as embodied in our resolution dated February 16, 1966.

We will now elaborate on the reasons expressed in said resolution.

The important provision to be considered is Article VII, Section 10, Subsection 4 of our Constitution, which provides:

"The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress."

A perusal of the above-quoted provision would at once reveal that it is the clear intent of the framers of our Constitution to make a recess appointment effective only (a) until disapproval by the Commission on Appointments, or (b) until the next adjournment of Congress, and never a day longer regardless of the nature of the session adjourned. And this is so considering the plain language of the aforesaid provision which is free from any ambiguity in the light of the well-settled rule of statutory construction that "when the intention of the legislature is so apparent from the face of the statute that there can be no question as to its meaning there is no room for construction" (Vol. 2, Sutherland, Statutory Construction, p. 316). Hence, the above provision contemplates two modes of termination of an ad interim appointment, or of one made during the recess of Congress, which are completely separate from, and independent of, each other. And while during the special session called under Proclamation No. 2 no Commission on Appointments was organized by Congress, the second mode of termination, however, had its constitutional effect, as when Congress adjourned sine die at about midnight of January 22, 1966. Such adjournment, in legal contemplation, had the effect of terminating petitioner's appointment thereby rendering it legally ineffective.

Petitioner's theory that the first mode of termination consisting in the disapproval by the Commission on Appointments should be inseparately related with the clause "until the next adjournment of Congress" in the sense that the Commission has to be first organized in order that the last mode may operate is untenable considering that the latter is not dependent upon, nor influenced in any manner by, the operation of the former. As already stated, the two modes of termination are completely separate from and independent of each other. If the framers of the Constitution had intended to make the operation of the second clause dependent upon the prior constitution of the Commission on Appointments they should have so stated in clear terms considering that the first clause implies a positive act of the Commission while the second an entirely separate and independent act of Congress. Indeed, the theory of petitioner, if carried to its logical conclusion, may result into the anomaly that, should Congress be controlled by a party not inclined to organize said Commission, or should there arise a group which for reasons of its own indulges in obstruct-ionism, the Commission on Appointments contemplated in the Constitution is never organized as a consequence of the action of either, any appointment made during the recess of Congress would never run the test of legislative scrutiny and would thereby then be always considered permanent even if it is extended ad interim, a result which, to be sure, was never intended by the framers of our Constitution. It thus becomes imperative that we avoid such absurd result.

It is true that the provision of the Constitution we are now considering in speaking of the mode of termination epitomized in the phrase "until the next adjournment of the Congress" does not make any reference to any specific session of the Congress, - whether regular or special, - but such silence is of no moment, for it is a well-known maxim in statutory construction that when the law does not distinguish we should not distinguish. *UBI LEX NON DISTINGUIT NEC NOS DISTINGUERE DEBEMUS* (Robles v. Zambales Chromite Mining Company, et al., G.R. No. L-12560, September 30, 1958). Consequently, it is safe to conclude that the framers of our Constitution

in employing merely the word adjournment as a mode of terminating an appointment made during the recess of Congress had in mind either the regular or special session, and not simply the regular one as contended by petitioner.

Under our tripartite form of government predicated on the principle of separation of powers the power to appoint is inherently an executive function while the power to confirm or reject appointments belongs to the legislative department, the latter power having been conferred as a check on the former. This power to check may be exercised through the members of both Houses in the Commission on Appointments. But although the Commission on Appointments is provided for in the Constitution, its organization requires congressional action, and once organized, by express provision of the Constitution, it "shall meet only while Congress is in session." Consequently, if for any reason Congress adjourns a regular or special session without organizing the Commission on Appointments, Congress should be deemed to have impliedly exercised said power to check by allowing the ad interim appointment to lapse as provided for in the Constitution.

The next important inquiry is: Since Congress in its special session held under Proclamation No. 2 of the President, series of 1966, did not deem it wise to organize the Commission on Appointments to act on the recess appointments made by the former Executive, can it be said that Congress is deemed to have impliedly exercised its power to check on such recess appointments when it adjourned its special session at about 12:00 o'clock midnight of January 22, 1966?

The answer must of necessity be in the affirmative inasmuch as that special session actually adjourned in legal contemplation at about 12:00 midnight of January 22, 1966 considering that the Senate adjourned sine die at about said hour. Although the House allegedly suspended its session at 10:55 p.m. on January 22, 1966 to be resumed on Monday, January 24, 1966, at 10:00 a.m., Congress cannot be considered to be in special session subsequently to January 22 for the reason that the House, without the Senate which had adjourned sine die, is not "Congress." Indeed, when the Senate adjourned at 12:00 midnight on January 22, 1966 this adjournment should be considered as the "next adjournment of the Congress" of the special session notwithstanding the alleged suspension of the session earlier by the House for the reason that neither the House nor the Senate can hold session independently of the other in the same manner as neither can transact any legislative business after the Adjournment of the other. None other than President Macapagal and Speaker Cornelio Villareal expressed such opinion when as members of the Lower House in 1954 they expounded and defended the same on the floor as can be seen from the following transcript of the congressional record:

"Mr. MACAPAGAL—* * * Since the Senate has, by its own responsibility, adjourned one and a half hours ago, therefore, under the present facts, in our Constitution this House is automatically adjourned, and therefore it is improper and illegal for us to continue the proceedings farther.

"* * * * *

"Mr. VILLAREAL—Mr. Speaker, although it is true that I do not want to appeal from the ruling of the Chair, nonetheless, I maintain that our actions from the time we approved that resolution will be illegal acts, and I do not want this Congress to commit illegal acts because it will affect the dignity of this Chamber. We are not unaware of the facts. I invite the Presiding Officer and everybody here to go to the Senate now, and if they accept my challenge, let us go so that I can prove to them that there is not one ghost of any Senator in that Chamber. The Senate has actually adjourned, Mr. Speaker, and are we to have a fiction here that the Senators are still holding a session? We approved that resolution of adjournment before twelve o'clock tonight knowing that the Senate adjourned two or three hours ago. Are we crazy here to believe that the Senators are still holding session? How can we in conscience justify our actions here that we are still doing something for the benefit of the people when in fact and in truth we are not because we cannot do so? * * *

"Mr. Speaker, let us be frank; let us be honest to ourselves; let us not ridicule ourselves; let us adjourn now because we have nothing to do and all that we will do will be illegal beginning now. * * *

"Mr. Speaker. I honestly believe that legally we cannot do anything any further, and if I am the author of a bill pending approval, I would not submit the bill for passage now because that will be the subject of litigation in court as to whether such approval will be legal or not, and I would never risk my committee report to be submitted after the approval of that resolution, knowing fully well that actually and physically that Upper Chamber has already adjourned." (Congressional Record, House of Representatives, 3rd Congress, Republic of the Philippines, First Regular and First Special Sessions, Vol. I, pp. 4091 and 4094).

As a corollary, the theory that there was a continuous session without any interruption when the House allegedly suspended its session at 10:55 p.m. on January 22, 1966 to be resumed on Monday, January 24, 1966 at 10:00 a.m. cannot be accepted, because such theory runs counter to well-established parliamentary precedents and practice. Thus, for one thing, between January 22, 1966 at 10:55 p.m. and January 24, 1966 at 10:35 a.m. when the House opened its regular session, there intervened January 23, 1966, which was Sunday, and as such is expressly excluded by the Constitution as a session day of Congress. For another, it is imperative that there be a "constructive recess" between a special and regular session, as when a regular session succeeds immediately a special session or vice-versa, and so a special session cannot be held immediately before a regular session without any interruption nor can both be held simultaneously together. Hinds' Precedents has the following to say on the matter:

"The commissions granted during the recess prior to the convening of Congress in extraordinary session November 9, 1903, of course furnished lawful warrant for the assumption by the persons named therein of the duties of the offices to which they were, respectively, commissioned. Their names were regularly sent to the Senate thereafter. If confirmed, of course they would hold under appointment initiated by the nomination without any regard to the recess commission. If not confirmed, their right to hold under the recess commission absolutely ended at 12 o'clock meridian on the 7th of December, 1903, for at that hour the extraordinary session ended and the regular session of Congress began by operation of law. An extraordinary session and a regular session can not coexist, and the beginning of the regular session at 12 o'clock was the end of the extraordinary session; not a constructive end of it, but an actual end of it. At 12 o'clock December 7 the President pro tempore of the Senate said:

Senators, the hour provided by law for the meeting of the first regular session of the Fifty-eighth Congress having arrived, I declare the extraordinary session adjourned without day.

"Aside from the statement upon the record that the 'hour had struck' which marked the ending of the one and the beginning of the other, the declaration of the President pro tempore was without efficacy. It did not operate to adjourn without day either the Congress or the Senate. Under the law the arrival of the hour did both.

"The constitutional provision that the commission shall expire at the end of the next session is self-executing, and when the session expires the right to hold under the commission expires with it. If there be no appreciable point of time between the end of one session and the beginning of another, since of necessity one ends and another begins, the tenure under the commission as absolutely terminates as if months of recess supervened." (Hinds' Precedents of the House of Representatives of the United States, Vol. V, p. 854)

Considering now petitioner's ad interim appointment and others extended under similar conditions in the light of the doctrine we laid down in the Aytona case, we may say that they were even more irregular than those involved in said case to the extent that they may be voided even on this ground alone. Thus, while President Garcia only extended 350 ad interim appointments after he had lost the election, President Macapagal made 1,717 ad interim appointments most of which were made only after the elections in November, 1965. As a consequence, the

following anomalies were noted: a former presidential assistant was appointed judge of three different salas, another was appointed to a non-existing branch of the Court of First Instance of Pangasinan, while still another who had a pending disbarment case received an ad interim appointment as judge of first instance. This is indeed a far cry from the following admonition we made in the Aytona case:

"Of course, nobody will assert that President Garcia ceased to be such earlier than at noon of December 30, 1961. But it is common sense to believe that after the proclamation of the election of President Macapagal, his was no more than a 'caretaker' administration. He was duty bound to prepare for the orderly transfer of authority to the incoming President, and he should not do acts which, he ought to know, would embarrass or obstruct the policies of his successor. The time for debate had passed; the electorate had spoken. It was not for him to use his powers as incumbent President to continue the political warfare that had ended or to avail himself of presidential prerogatives to serve partisan purposes. The filling up of vacancies in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted. But the issuance of 350 appointments in one night and the planned induction of almost all of them a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of Presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make the corresponding appointments." (Aytona v. Castillo, et al., G. R. No. L-19313, January 20, 1962)

It is hoped that now and hereafter such excess in the exercise of power should be obviated to avoid confusion, uncertainty, embarrassment and chaos which may cause disruption in the normal function of government to the prejudice of public interest. It is time that such excess be stopped in the interest of the public weal.

Wherefore, petition is denied. No costs.

Bengzon, C.J., Reyes, J. B. L., Barrera, and Regala, JJ., concur.

Makalintal, J., dissents for the same reasons previously expressed by him in the resolution of Feb. 16, 1966.

CONCURRING

CONCEPCION, J.,

Having been extended an ad interim appointment, dated November 18, 1965, as Undersecretary of Labor, petitioner Onofre P. Guevara assumed the office on November 25, 1965. The question for determination is whether his title to said office has lapsed upon adjournment of the special session of Congress that began on January 17, 1966, in view of the provisions of Section 10(4), Article VII of the Constitution, reading:

"The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress."

Petitioner maintains that the question adverted to above should be answered in the negative, for there has been no adjournment of Congress because the aforementioned special session had commenced on January 17, 1966, and, although the Senate had adjourned sine die shortly after midnight of January 22 to 23, 1966, the House of Representatives merely suspended its session on January 22, 1966, at 10:55 p.m., "to be resumed on January 24, 1966, at 10:00 a.m." when the present regular session began. Petitioner concludes, therefrom, that Congress has been in "continuous session without any interruption" since January 17, 1966.

This pretense is clearly devoid of merit for:

1. The Senate had admittedly adjourned at about mid-night of January 22 to 23, 1966. Inasmuch as the House of Representatives is only a part of our Congress, not Congress itself, it follows necessarily that "Congress" can not be said to have been in session on January 23, 1966.

2. Not even the House was in special session on January 23 and 24, 1966. The fact is that it did not hold any session on January 23, 1966. Although it purported to have "suspended" the session on January 22 to be resumed on January 24, the House did not, evidently, intend to "resume" the special session on January 24, 1966, at 10:00 a.m., for: a) the members of the House knew that the regular session would then begin; b) the regular session did begin on January 24, 1966, at 10:00 a.m.; and c) they did not meet, or try or even purport to meet in special session on January 24, 1966, or at any other time after January 22, 1966. In other words, when, on January 22, 1966 at 10:55 p.m., the House placed on record that the (special) session was then suspended to be resumed on January 24, 1966, at 10:00 a.m., it meant that the Congressmen would meet on January 24, 1966, at 10:00 a.m., not in special session, but to begin the regular session.

3. Petitioner does not claim that Congress is still in special session. It is, likewise, an undisputable and undisputed fact that the regular session of Congress had begun on January 24, 1966. Since the commencement of such regular session has necessarily put an end, ipso facto, to the special session that began on January 17, 1966, the inevitable conclusion is that Congress, assembled in such special session, has adjourned since, at least, January 24, 1966,[1] even if we assumed hypothetically that its two (2) Houses had actually assembled daily in legislative session, without any interruption, from January 17 up to this date, which is not a fact. Indeed, said assumption does not offset the fact that the present regular session of Congress is different, distinct and separate from said special session; that said regular session is not the session next following the issuance of petitioner's ad interim appointment; and that, even if the regular session had followed the special session, without any physical solution of continuity, said special session, which is the one next to said ad interim appointment, has in fact and in law been adjourned. Hence, it is admitted in the petition herein (par. 6[d]) that the aforementioned "suspension by the House" of its session on January 22, to be resumed on January 24, 1966, at 10:00 a.m., "meant the end of the special session."

It is next urged by petitioner that the clause "the next adjournment of the Congress" in the above quoted provision of our fundamental law refers to an adjournment of Congress assembled in regular session. I am unable to accept this view because:

1) To do so would entail a judicial legislation by the insertion of the word "regular" in said provision. We can not even justify such act upon the ground of judicial construction, for "where the language of a statute is plain and unambiguous"—as the constitutional precept in question is—"there is no occasion for construction, and the statute must be given effect according to its plain and obvious meaning,"[2] and "this is true even though other meanings of the language employed could be found." [3]

The editor of American Jurisprudence has expressed itself as follows:

"* * * Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory construction, and the court has no right to look for or impose another meaning." [4]

2) Neither can we adopt petitioner's theory without, in effect, amending the Constitution, and violating its requirement thereof of "a vote of three-fourths (3/4) of all the Members of the Senate and of the House of Representatives voting separately" and a ratification by a majority of the votes cast at a plebiscite called for the purpose.[5] As the branch of the Government to which the task of being the last bulwark of the Constitution has been assigned, we can not adopt the posture advocated by the petitioner, entailing as it does an impairment of the basic tenets of our political system, and the assumption of omnipotent powers which, admittedly, we do not have.

2) Petitioner's theory is refuted by the fact—admitted by petitioner and his counsel—that the adjournment of a

special session of Congress may render ineffective an ad interim appointment made prior thereto, if said appointment had been preceded by a regular session of a new Congress. In fact, upon adjournment of the regular session of Congress in 1965, ad interim appointments were made, some of which, including those of several members of this Court, were renewed upon the adjournment of each of the several special sessions called after said regular session. In other words, it is an established practice in this jurisdiction, confirmed no less than by the party backing up petitioner herein, that ad interim appointments made before a given special session of Congress, expire upon the adjournment thereof.

Petitioner's theory is further refuted by the fact that, if a special session is held before the initial regular session of a new Congress, and the Commission on Appointments is organized during said special session, its adjournment would admittedly extinguish the effectivity of ad interim appointments made prior thereto, provided, according to petitioner, that the Commission has had reasonable time during that session to act on said appointments.

In this connection, it should be noted that, although Congress convenes in regular session on the fourth Monday of January, it may by law fix another date for the beginning of said session.^[6] Suppose that the date fixed by law therefor is, say, June 19 (Rizal's birthday); that ad interim appointments have been made on January 2, following the assumption of office of a new President, who calls four (4) special sessions, one after the other, each for thirty (30) days, the first to begin on January 5; and that the Commission on Appointments is duly organized on January 10. Shall we hold that, if the Commission does not act on said appointments, the same shall be effective until the adjournment of the regular session of Congress, which, in our hypothesis, would take place early in October? Indeed, there is no plausible reason to distinguish between the adjournment of a regular session and that of a special session, insofar as the effect thereof upon ad interim appointments is concerned.

The main argument adduced in support of petitioner's theory that the adjournment of the last special session of Congress cannot affect the effectivity of his ad interim appointment, is that the Commission on Appointments had not been organized during said special session and that, even if then organized, the Commission would not have had enough time, during that session, to consider the 1,717 ad interim appointments made after the last special session held in 1965.

With respect to the last part of the argument, the Constitution does not make the extinctive effect of the "next adjournment of the Congress" upon ad interim appointments made prior thereto dependent on the sufficiency of the time available to the Commission on Appointments to act on said appointments. Thus, if the Commission on Appointments were not organized until, say, May 15, 1966, there could be no possible doubt that such ad interim appointments as may have been made prior to the present regular session of Congress, no matter how many said appointments may be, would lapse upon adjournment of Congress at about May 20, or five (5) days later, even if this period of time were manifestly inadequate to permit a reasonable consideration of said appointments.

Let us now consider the theory that the "next adjournment of the Congress" does not extinguish the effectivity of ad interim appointments made prior thereto, unless the Commission on Appointments has been organized before said adjournment. This theory is contradicted by the admission of petitioner's counsel, during the hearing of this case, that, upon adjournment of a regular session of Congress, ad interim appointments made before said session would lapse, even if the Commission on Appointments had not been organized prior to said adjournment.

The aforementioned theory is, moreover, predicated upon false assumptions, namely: that the "next adjournment of the Congress" should be construed in relation only to the "disapproval of the Commission on Appointments," not to "the recess of the Congress"; that "the next adjournment of the Congress" terminates the effectivity of ad interim appointments because the Commission on Appointments cannot function when Congress is not in session; and that Congress would be usurping the functions of the Commission on Appointments if said appointments

lapsed by the adjournment of Congress, although the Commission had not as yet been constituted.

At the outset, it is well to remember that one of the fundamental tenets underlying our Constitutional system is the principle of separation of powers, pursuant to which the powers of government are mainly divided into three classes,[7] each of which is assigned to a given branch of the service.[8] The main characteristic of said principle is not, however, this allocation of powers among said branches of the service,[9] but the fact that: 1) each department is independent of the others and supreme within its own sphere; and 2) the powers vested in one department cannot be given or delegated, either by the same or by Act of Congress, to any other department. The reason is that, otherwise, instead of being separated, said powers are likely to be concentrated—and hence united in one (1) department,[10] thereby seriously jeopardizing our republican system. Indeed, history has shown that sovereignty cannot long remain in the people when the powers of Government are in the hands of one man, for the latter is thus placed in a position, and would eventually be inclined, to change his role, from that of a public servant to that of master of the people.

The separation of powers in our Government is not, however, absolute. Not all legislative powers are vested in Congress. Some, like the veto power and the power to make rules of Court, are explicitly vested in the President and the Supreme Court, respectively.[11] Similarly, not all executive powers are vested in the President. Some, like the treaty making power, are shared by him with the legislative department.[12] Not all judicial powers are vested in courts of justice. Some—like the pardoning power—are lodged exclusively in the President.[13]

As a consequence, there is some overlapping of powers and a system of checks and balances, under which a department may exercise some measure of restraint upon another department. Such is the situation as regards the appointing power of the Executive, which is subject to said restraint by the legislative department.[14] Indeed, the latter may limit said executive power by, *inter alia*, prescribing the qualifications of the appointees, fixing their term of office, or disapproving appointments to some offices.

With respect to the approval or disapproval of appointments, the framers of our Constitution considered it, however, impractical to entrust the exercise of the power to the whole National Assembly or Congress. Considering its sizeable membership, it was deemed wiser to vest the power of confirmation or rejection of appointments upon a body, small enough to permit reasonably expeditious action, when necessary, but sufficiently representative to reflect substantially the views of the legislature. Hence, the Commission on Appointments, which, under the present Constitution, consists of "twelve Senators and twelve Members of the House of Representatives elected by each House, respectively, on the basis of proportional representation of the political parties therein." [15] Although, in the discharge of their duties, the Members of the Commission are not under the Control of Congress, it is only obvious, from the composition of the Commission—particularly the equal representation therein of each House of Congress and the manner of selection of the members of the Commission—that the same was expected to reflect the feelings of Congress on presidential appointments, and this expectation has, invariably, been borne out by the facts. In other words, the Commission was intended to be, and is an agent of Congress, or the means by which Congress may check the appointing power of the President.

More specifically, appointments made by the President are subject to two (2) forms of legislative restraint, namely: a) disapproval of the Commission on Appointments; and b) termination of the effectivity of *ad interim* appointments upon "the next adjournment of the Congress."

As regards the first form of restraint, the Constitution provides that regular appointments to specified offices shall be made only after consent thereto has been given by the Commission on Appointments, to which the President must have first submitted the corresponding nominations.[16] Inasmuch as the Commission can act only while Congress is in session,[17] no appointments could be made during a recess of Congress for lack of said consent, if

the provision above quoted had not been inserted in the fundamental law. Pursuant thereto, when Congress is not in session, a nomination need not be made. Neither is the previous consent of the Commission on Appointments necessary, for, being impotent to act at such time, said consent cannot possibly be given. In order to avoid a hiatus in the public service—to forestall a suspension in the exercise of governmental functions—the President may "make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress."

Now, why is the lifetime of ad interim appointments so limited? Because, if they expired before the session of Congress, the evil sought to be avoided—interruption in the discharge of essential functions—may take place. Because the same evil would result if the appointments ceased to be effective during the session of Congress and before its adjournment.[18] Upon the other hand, once Congress has adjourned, the evil aforementioned may easily be conjured by the issuance of other ad interim appointments or reappointments.

In short, an ad interim appointment ceases to be effective upon disapproval by the Commission, because the incumbent can not continue holding office over the positive objection of the Commission. It ceases, also, upon "the next adjournment of the Congress", simply because the President may then issue new appointments—not because of implied disapproval of the Commission deduced from its inaction during the session of Congress, for, under the Constitution, the Commission may affect adversely the interim appointments only by action, never by omission. If the adjournment of Congress were an implied disapproval of ad interim appointments made prior thereto, then the President could no longer appoint those so bypassed by the Commission. But, the fact is that the President may reappoint them, thus clearly indicating that the reason for said termination of the ad interim appointments is not the disapproval thereof allegedly inferred from said omission of the Commission, but, the circumstance that, upon said adjournment of the Congress, the President is free to make ad interim appointments or reappointments.

It is thus patent that the adjournment of Congress operates differently from the disapproval by the Commission; that the effect of the former is predicated upon a premise other than that of the latter; and that the opinion of the majority of the Court in the case at bar, not only does not lead to an encroachment by Congress upon the field assigned to the Commission on Appointments, but is, moreover, in consonance with the letter and the spirit of the fundamental law.

In fact, the first draft of our Constitution provided that ad interim appointments shall "become ineffective after a period of three months or upon disapproval" by a Permanent Commission, which was to perform the functions of the Commission on Appointments. In other words, it subjected the effectivity of said appointments to (1) a period (three months) and (2) a condition (disapproval by the Permanent Commission). It is worthy of notice, in this connection, that the operation of said period was not conditioned upon the organization of the Permanent Commission. The provision incorporated into the original Constitution[19] adopted, in principle, the same limitations; a period and a condition. In lieu of the "Permanent Commission", it used the phrase "Commission on Appointments", and instead of the three-month term in the draft, it, merely, inserted the clause "until the next adjournment of the National Assembly". Upon the amendment of our Constitution, by the establishment of a bicameral legislature, the term "Congress" was substituted in lieu of the "National Assembly". The philosophy of the original draft was thereby preserved—the effectivity of ad interim appointments is subject to a condition (disapproval by the Commission on Appointments) and a period (the next adjournment of the Congress, regardless of whether the Commission on Appointments has been organized or not).

A portion of my concurring and dissenting opinion in *Aytona v. Castillo* (L-19313, Jan. 19, 1962) has been quoted in support of petitioner herein. Detached from the context thereof, the quotation seemingly gives an impression altogether at variance with the obvious import of said opinion. The *Aytona* case did not involve the legal issue

posed in this case—the effect of the adjournment of a special session of Congress upon ad interim appointments made prior thereto. The question raised in the Aytona case was whether an incoming President could, before Congress had met in regular or special session, validly withdraw ad interim appointments made by the outgoing President, in order that the Commission on Appointments could not act, even if it wanted to, on said appointments. In the regular session of Congress following said withdrawal of ad interim appointments, the Commission on Appointments was actually organized. What is more, the Commission did, in fact, approve or confirm some of the aforementioned ad interim appointments. The Aytona case was decided even before the next session of Congress had begun. An incident thereof^[20] was decided before the adjournment of said session. There was no occasion, therefore, to pass upon the effect of said adjournment. In the case at bar, the ad interim appointments made by the outgoing President were not withdrawn by the incoming President before the special session of Congress; the Commission on Appointments was not organized during said special session; and the President merely considered said appointments^[21] ineffective upon the adjournment of the aforementioned special session, as well as withdrawn.

True, there are a number of things in common between the Aytona case and the one at bar; in both cases the outgoing President had made hundreds of ad interim appointments knowing that he had lost his bid for reelection; in both cases equity is, admittedly, against the action taken by the outgoing President and in favor of that taken by the incoming President; in both cases the judicial verdict has been in favor of the latter. But, then, there are the following points of difference: (1) the right of the in-coming President to withdraw said appointments in the Aytona case was defended by those who deny the existence of such right in the present case; (2) those who invoked equity in favor of the measure taken by the incoming President in the Aytona case, now object to the application of the rules of equity in favor of the action taken by the incoming President in the case at bar; (3) the only legal ground in support of our decision in the Aytona case was a principle of equity—the writs of prohibition and mandamus sought by Aytona depended upon the sound discretion of the Court, to be exercised on equitable principles, because of which the writs were denied—whereas, in addition to equity, there is a clear and explicit provision of the Constitution in support of the step taken by the incoming President in the present case; (4) those who urged the rendition of said decision in the Aytona case, backed by no other principles than those of equity, and hailed it as an act of justice, now maintains that said principles, plus said constitutional provision, are insufficient to warrant a similar decision in the present case.

It is trite to say that the interest of the appointees involved therein cannot but be the object of grave concern. But, the Courts must apply the law as they find it, not as they wish it to be. Moreover, the power to make ad interim appointments and the lifetime thereof are dictated by considerations of public policy—the necessity of insuring continuity in the discharge of the sovereign functions of the State. The protection of the interest of the appointees is subordinate to such policy and merely incidental thereto. Under our constitutional set up, the President is the principal administrative officer of the Government. As such, he is the officer mainly responsible for the faithful execution of the laws and the maintenance of law and order in the Philippines. Consistently with this responsibility, he has the authority to appoint those who shall assist him in the discharge of his difficult task. He may exercise such authority, even if his term is about to expire, but, only to avoid a disruption in the operation of the Government. And his appointees—particularly those whose appointments have been confirmed by the Commission on Appointments—shall be entitled to remain in office, even after the expiration of his term. But, the recipients of his ad interim appointments are forewarned that the same are subject to the resolutive condition and the period adverted to above. They know that, unless approved by the Commission prior thereto, the appointments cease to be effective upon the expiration of said period. They know that the incoming Executive may then either re-appoint those whose ad interim appointments had lapsed or appoint others whom he may deem fit to carry out the policies of his administration. In the exercise of this authority, his functions are mainly political, and, hence,

not subject to judicial review.

Wherefore, I vote to dismiss the petition and concur in the majority opinion, penned by Mr. Justice Felix Bautista Angelo.

[1] The Constitutional provision that the commission shall expire at the end of the next session is self-executing, and when the session expires the right to hold under the commission expires with it. If there be no appreciable point of time between the end of one session and the beginning of another, since of necessity one ends and another begins, the tenure under the commission is absolutely terminated as if months of recess supervened. Hind's Precedents of the House of Representatives, see pp. 859-861 and 862-864, Vol. 5.

[2] 82 C.J.S. 577;

[3] Hattermer v. State Tax Commission, 177 So. 156, 235 Ala.44; City of Birmingham v. Southern Express Co., 51 So. 159, 164 Ala. 529; Hartford Accident & Indemnity Co. v. W.S. Dickey Clay Mfg. Co., 24 A. 2d 315, 26 Del. Ch. 411; State ex rel. Grodin v. Barnes, 161 So. 568, 573, 119 Fla. 405; Home Owners' Loan Corporation v. District Court of Woodbury County, 272 N.W. 416, 223 Iowa 269; 82 C.J.S. 582.

[4] 50 Am. Jur. 205-206.

[5] Art. XV, Const. of the Phil.

[6] Art. VI, Sec. 9, Const. of the Phil.

[7] The legislative, the executive and the judicial.

[8] The legislative to Congress, the executive to the President, and the judicial to the Supreme Court and such inferior courts as may be established by law.

[9] For there may be allocation or division of powers without separation of powers.

[10] In all likelihood in the Executive, who has the armed forces under his command.

[11] Art. VI, Sec. 20(2)(3), and Art. VIII, Sec. 13, Const. of the Phil.

[12] Or the Senate, as regards treaties, Art. VI, Sec. 10(7), Const. of the Phil.

[13] Art. VII, Sec. 10(6), Const. of the Phil.

[14] The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. For example, the Chief Executive under our Constitution is so far made a check on the legislative power that this assessment is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent through its Commission on Appointments is necessary in the appointment of certain officers; and the concurrence of a majority of all its members is essential to the conclusion of treaties. x x x." (Angara v. Electoral Commission, 63 Phil., 139.)

The Congress of the Philippines operates as a check on the other departments through the exercise of powers expressly or impliedly conferred upon it. This, while the power to appoint executive officers is essentially an executive function, presidential nominations to said offices is subject to confirmation by the Commission on

Appointments, composed of some members of both houses of Congress. (Francisco, Philippine Political Law, 1955 ed., p. 149.)

Congress may check the President through its Commission on Appointments, by rejecting appointments made by the President. (Martin, Philippine Political Law, 1964 Rev. Ed., p. 70.)

The President, in addition to the general grant of executive power, was also expressly conferred the veto power, which is essentially legislative in nature; and the Commission on Appointments, a legislative agency, was given the specific power to participate in the essentially executive power of appointment by confirming or rejecting presidential appointments. (Tañada & Carreon, Pol. Law of the Phil., Vol. 1, pp. 182-183, 206-207.)

[15] Art. VI, Sec. 12, Const. of the Phil.

[16] Art. VII, Sec. 10(3), Const. of the Phil.

[17] Art. VI, Sec. 13, Const. of the Phil.

[18] During such session there must first be a nomination, and only after the Commission has consented thereto may the president issue the corresponding appointment.

[19] Under which the legislative power was vested in a unicameral National Assembly.

[20] The intervention of Perfecto Querubin, Resolution of March 30, 1962. See, also, Cunanan vs. Tan, L-19721, May 10, 1962.

[21] Including those made by him before said special session.

CONCURRING

DIZON, J.,

I concur.

However, aside from the reasons given in support of the majority opinion penned by Mr. Justice Felix Bautista Angelo, I am of the opinion that the ad interim appointments extended to petitioner Guevara must be deemed to have lapsed for the reasons given in support of the concurring opinion penned by former Justice Sabino Padilla in the Aytona case—with which I concurred.

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