

CANDIDO B. LOPEZ, PETITIONER AND APPELLANT, VS. JOSE DE LOS REYES, IN HIS CAPACITY AS PEACE OFFICER AND ASSISTANT CHIEF OF THE CONSTABULARY, RESPONDENT AND APPELLEE.

G.R. No. 34361. November 05, 1930

Ponente: MALCOLM, J.

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MALCOLM, J.:

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This is an application for the writ of habeas corpus to relieve the petitioner from restraint of his liberty, by a ranking officer of the Constabulary, under a warrant of arrest issued by the Speaker of the House of Representatives, pursuant to resolutions of the House finding the petitioner guilty of contempt. In addition to counsel for the petitioner and the Attorney-General for the respondent, Honorable Ricardo Nepomuceno and Honorable Monico Mercado, members of the House of Representatives, have appeared as amici curiae.

On September 16, 1930, the House of Representatives adopted the following:

"RESOLUTION CONFIRMING AND RATIFYING THE RESOLUTION OF THIS HOUSE, NUMBER FIFTYONE, AND AUTHORIZING ALL PEACE OFFICERS TO COMPLY WITH THE SAME.

"Whereas, the following resolution was adopted by the House of Representatives on November 6, 1929:

"RESOLUTION REQUIRING THE SPEAKER OF THE HOUSE OF REPRESENTATIVES TO ORDER THE ARREST OF CANDIDO LOPEZ TO BE CONFINED IN THE BILIBID PRISON FOR TWENTY-FOUR HOURS.

" 'Whereas, on October 23, 1929, Candido Lopez attacked and assaulted, without any justification, the Honorable Jose D. Dimayuga, who was then and is now a member of the House of Representatives of the Philippine Islands, while said Representative was going to the hall of the House of Representatives to attend the sessions which were then about to begin, as a result of which attack and assault said Representative was unable to attend the sessions on that day and those of the two days next following, by reason of the threats which Mr. Candido Lopez made against said Representative, Honorable Jose D. Dimayuga;

" 'Whereas, these acts of aggression and assault were committed by the aforesaid Mr. Candido Lopez knowing full well as he then knew that said Representative was and is one of the members of the House of Representatives, who was then going to the hall of said House to attend the sessions thereof which were about to begin at the moment of the aggression;

" 'Whereas, said Candido Lopez appeared before the Committee on Privileges of the House of Representatives where he was notified that he was charged with contempt for having violated the privileges of one of the

members of this house, and then and there had the opportunity to defend himself personally and by counsel, and to adduce evidence in his favor;

" 'Whereas, all the foregoing facts have been established beyond reasonable doubt; Now, therefore,

" 'Be it resolved, To declare, as it hereby declares, said Candido Lopez guilty of contempt of the House of Representatives for having violated the privileges of one of the members of said House of Representatives;

"Be it further resolved, To order, as it hereby orders, that said Candido Lopez be punished by confinement in Bilibid Prison, Manila, as any other transgressor of the law, for a period of twenty-four hours; and

" 'Finally be it resolved, That the corresponding order of arrest be issued in due form, signed by the Speaker, stamped with the Seal of the House of Representatives, and addressed to the Sergeant-At-Arms, Mr. Alfredo Javier, requiring and ordering the said Sergeant-At-Arms to comply with this order.'

"Whereas, said resolution has not been complied with up to the present time, notwithstanding the efforts done by the Sergeant-At-Arms of the House of Representatives, because said Candido Lopez has concealed himself, taking advantage of all kinds of subterfuges in order to avoid compliance therewith and to defy the authority of this House;

"Whereas, the Committee on Privileges of this House, acting on the petition for reconsideration presented after the approval of said resolution, has arrived at the conclusion that there is no ground to modify or revoke the aforesaid resolution; Now, therefore,

"Be it resolved, To confirm and ratify, as it hereby confirms and ratifies, the aforementioned resolution;

"Be it further resolved, To order and authorize, as it hereby orders and authorizes, the Sergeant-At-Arms of this House, or his agents, or any official or member of the Insular Police or any police officer, in compliance with said resolution, to arrest said Candido Lopez for confinement in Bilibid Prison, Manila, to serve therein the sentence of twenty-four hours imposed by said Resolution;

"Be it finally resolved, That the corresponding order of arrest be issued in due form, signed by the Speaker, stamped with the Seal of the House of Representatives, and addressed to the Sergeant-At-Arms of this House, or any of his agents, or any official or member of the Insular Police, or any peace officer, ordering and requiring compliance with this order."

From the above, it will be observed that the alleged assault by Lopez on Representative Dimayuga occurred on October 23, 1929. The House of Representatives adopted its original resolution, requiring the Speaker to order the arrest of Lopez, to be confined in Bilibid Prison for twenty-four hours, on November 6, 1929. The House adjourned that session, the second, at midnight on November 8, 1929, without the order of arrest having been served on Lopez. The confirmatory resolution hereinbefore quoted was approved on September 16, 1930, during the third session of the Philippine Legislature.

It further appears that a new warrant of arrest was issued by the Speaker of the House of Representatives on September 17, 1930. Lopez was taken into custody by Colonel De los Reyes, Assistant Chief of the Constabulary, on September 19, 1930. Immediately a writ of habeas corpus was obtained from Honorable Mariano Albert, Auxiliary Judge of First Instance sitting in the City of Manila. Eight reasons were enumerated to show illegal restraint of the petitioner, including as the most important the following :

"(a) Because the House of Representatives is absolutely lacking in authority and jurisdiction to try and punish any citizen in this country with imprisonment for alleged assault committed on any person irrespective of rank or social position, for the power to try and punish any person as charged with violation of law lies exclusively within the province of the judicial department of the Philippine Government;

" (b) Because the House of Representatives has lost its jurisdiction over the person of the petitioner and the offense charged, for the act complained of is alleged to have been committed on the person of Representative Dimayuga on or about October 23, 1929, and the session of the House of Representatives having adjourned at midnight of November 8, 1929, any order issued after the period of that session in which the alleged offense was committed is without force and effect." The Attorney-General, in his return, after formal allegations, stated:

"4. That the Philippine House of Representatives has power to order the commitment of persons guilty of contempt against it and the Speaker of the House of Representatives is empowered to issue the warrant of arrest above referred to;

"5. That this court has no jurisdiction to entertain this petition, in view of the separation of powers between the Executive, Legislative and Judicial Departments of the Government;

"6. That this court has no power to inquire into the correctness of the facts recited in the resolution of the House of Representatives punishing the petitioner for contempt." The trial judge dismissed the petition, with costs, and remanded the petitioner to the custody of the respondent for compliance with the order of the House of Representatives. The petitioner appealed from the judgment to this court and here, in compliance with the law, the appeal has been given precedence over all actions pending in the Supreme Court."

In order to clear the ground for a decision of the main issues, it should first of all be noted that no question of fact is involved, since no traverse to the return was interposed, and since no exception to the denial of the application for permission to offer evidence was made in the court below. We agree with the Attorney-General that a strictly question of law, in other words of jurisdiction, is presented for determination. In the same connection, we may say further that the court need not inquire into the correctness of the facts recited in the original resolution of the House of Representatives punishing the petitioner for contempt. We cannot, however, concur with the statement of the Attorney-General that, because of the separation of powers, the courts have no jurisdiction to entertain this petition. Where the liberty of the citizen is concerned, the legality of the action taken by the legislative body in punishing for contempt is a proper subject for inquiry on habeas corpus. (*Zagala vs. Ilustre* [1925], 48 Phil., 282; *Lorenzo vs. Director of Health* [1927], 50 Phil., 595; *Burnham vs. Morrissey* [1859], 14 Gray, Mass., 226, fully concurred in by the United States Supreme Court in *Kilbourn vs. Thompson* [1880], 103 U. S, 168.)

This leaves us then with the negation in the petition of the power of the House of Representatives to order the commitment of persons guilty of contempt against it and with the affirmation of this power in the return. This leaves us further with the denial in the petition of jurisdiction in the House of Representatives on account of the power being only coextensive with the session of the body in which the alleged contempt occurred, not specially answered in the return. There are other points mentioned in the assignment of errors and in the briefs, but the foregoing impress us as disclosing the two main issues decisive of the case. We will take them under view in order. I. Power of the House of Representatives to punish for contempt.—For comparative and informative purposes, it is advisable to turn to the experience of Great Britain and the United States. The Houses of the British Parliament were originally courts of judicature, and still retain, on account of that origin, the power to punish for contempt. But it is not to be inferred, because of this power of the Houses in the British Parliament, that a like power belongs to legislative assemblies in the British dependencies, as for instance, in the House of Assembly of Newfoundland. In the United States, the theory of the division of powers negatives any implication of the possession by the Congress of the United States of the commingled legislative and judicial authority as to contempts, which is exercised by the English House of Commons. The two Houses of the Congress of the United States do not possess the general power of punishing for contempt, and the cases in which they can do so are very limited. The power to deal directly by way of contempt, without criminal prosecution, may be implied from the constitutional grant of legislative power to the Congress in so far, and so far only, as such authority is necessary to

preserve and carry out the legislative power granted. The two Houses of the Congress, in their separate relations, possess such auxiliary powers as are appropriate to make the express powers effective. In these latter cases, the power to punish for contempt rests solely upon the right of self-preservation. Proceeding on this theory, punishment has been imposed for assaults upon members of the House of Representatives which prevented members from attending the sessions of the House. But the power does not extend to the infliction of punishment as such. In the apt phrase of Chief Justice White of the United States Supreme Court, "It is a means to an end and not the end itself." (*Burdett vs. Abbott* [1811], 14 East, 1; *Kielley vs. Carson* [1841], 4 Moo. P. C., 63; *Anderson vs. Dunn* [1821], 6 Wheat., 204,—questioned and rejected as to some of its reasoning in later decisions of the United States Supreme Court—; *Kilbourn vs. Thompson*, *supra*; *R& Chapman* [1896], 166 U. S., 661; *Marshall vs. Gordon* [1917], 243 U. S., 521; *McGrain m Daugherty* [1927], 273 U. S., 135.)

The power of the State Legislatures in the United States to punish for contempt may be somewhat broader in theory than that of the Congress of the United States. A number of State constitutions and statutes authorize each House of the Legislature to punish for contempt. Even without express constitutional provisions, the view generally taken by the State courts is that the power to punish for contempt is inherent in the bodies composing the legislative branch, and that the legislative bodies may inflict punishment on those guilty of acts which tend directly to defeat, embarrass, or obstruct legislative proceedings. (*Ex parte Parker* [1906], 74 S. C, 466; 7 Am. and Eng. Ann. Cas., 874, 876 Note; *In re Davis* [1897], 58 Kans., 368; *State vs. Mathews* [1859], 37 N1. H., 450.)

With this background, we turn to consider the power of a legislative body in the Philippines to punish for contempt. It is a question of first impression.

General legislative powers, with certain exceptions, are vested in the Philippine Legislature, consisting of the Senate and the House of Representatives. The Philippine Legislature, it has been said, has practically the same powers in the Philippine Islands, within the sphere in which it may operate, as the Congress of the United States. (*Alejandrino vs. Quezon* [1926], 271.U.S., 528; *Tiaco vs. Forbes* [1913], 228 U. S., 549; *Chanco vs. Imperial* [1916], 34 Phil., 329; *XL S. vs. Pompeya* [1915], 31'Phil., 245.) No express power to punish for contempt was granted by the Organic Act to the Senate and the House of Representatives save the power to deal with contempts committed by their own members. The Senators and Representatives, except in specified cases, are, however, privileged from arrest during their attendance at the sessions of their respective Houses and in going to and returning from the same.

Act No. 1755 punishes disturbances of legislative bodies by fine or imprisonment, in the discretion of the court. Section 102 of the Administrative Code, similarly punishes contempts by recalcitrant witnesses of a legislative body or committee. The Penal Code, in addition, contains various provisions for the punishment of transgressors against the law. It is now argued that, because of these laws, particularly Act No. 1755, the Philippine Legislature has denned the punishable acts against its own authority, and has delegated its power of punishment to the courts.

The untenability of this position is apparent on its face. In the first place, the Philippine Legislature could not divest either of its Houses of the inherent power to punish for contempt. In. the second place, the same act could be made the basis for contempt proceedings and for a criminal prosecution. It has been held that a conviction and sentence of a person, not a member, by the House of Representatives of the United States Congress, for an assault and battery upon a member, is not a bar to a subsequent criminal prosecution by indictment for the offense, (*U. S. vs. Houston* [1832], 26 Fed. Cas., 379.) In the third place, and most important of all, the argument fails to take cognizance of the purpose of punishment for contempt, and of the distinction between punishment for contempt and punishment for crime. Let us reflect on this last statement for a moment. The implied power to punish for contempt is coercive in nature. The power to punish crimes is punitive in nature. The first is a vindication by the House of its own privileges. The second is a proceeding¹ brought by the State before the courts to punish

offenders. The two are distinct, the one from the other. (Marshall vs. Gordon, *supra*.)

In the case of *Re Chapman*, *supra*, the United States Supreme Court fully settled the point that the Congress of the United States could exercise its implied power to punish for contempt to the end of the session of the House, even though it had enacted a statute for the punishment of such contempt as a misdemeanor. In refuting the contention "that the law delegates to the District of Columbia Criminal Court the exclusive jurisdiction and power to punish as contempt the acts denounced, and thus deprives the Houses of Congress of their constitutional functions in the particular class of cases," the court, through Chief Justice Puller, stated "that Congress could not divest itself, or either of its Houses, of the essential and inherent power to punish for contempt, in cases to which the power of either House properly extended."

Notwithstanding the lack of constitutional authority, it would hardly be reasonable to suppose that the Houses of the Philippine Legislature were intended to function in the restricted way in which an assembly like that of Newfoundland was intended to function. A power essential to permit the Houses of the Philippine Legislature to perform their duties without impediment, as contemplated by the Organic Act, must be assumed. There is as much necessity for the Houses in a territorial legislature to possess the power to punish for contempt as there is for the Houses in the Congress of the United States and the Houses in the State Legislatures to possess this power. Accordingly, we rule that a limited power to punish persons not members for contempt resides in the House of Representatives of the Philippine Legislature.

II. Duration of the 'punishment for contempt.—Conceding, without really having to decide, that the House of Representatives, in the exercise of a fair discretion with which the courts should not interfere, was justified in finding Lopez in contempt, as contemplated in the original resolution, we pass to the consideration of the second branch of the case. As will soon appear, the proposition which follows is accepted with hardly any dissent, namely, imprisonment for a term not exceeding the session of the deliberative body in which the contempt occurred, is the limit of the authority to deal directly by way of contempt, without criminal prosecution.

This is the rule in England for the House of Commons but not for the House of Lords. In the celebrated case of *Stockdale vs. Hansard* ([1839], 9 Ad. & E., 1), Lord Denman, the Chief Justice, in a masterly opinion, to use the words of the United States Supreme Court in *Kilbourn vs. Thompson*, *supra*, said the following: "However flagrant the contempt, the House of Commons can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offence being committed the day before a prorogation, if the House ordered his imprisonment but for a week, every Court in Westminster Hall and every Judge of all the courts would be bound to discharge him by habeas corpus."

Likewise it may be said to be the rule for the Congress of the United States. In congressional practice, the only instance where a person was imprisoned by the House of Representatives, and such imprisonment extended beyond the adjournment of the session, occurred in the case of Patrick Woods in 1870. But the following year, in the case of *White and Ramsdell*, the United States Senate virtually repudiated the action of the House in Wood's case. (Eberling, *Congressional Investigations*, pp. 180 et seq.) The United States Supreme Court has twice definitely held that the power is limited to imprisonment during the session of the legislative body affected by the contempt. (*Anderson vs. Dunn*, *supra*; *Marshall vs. Gordon*, *supra*.) The language of the higher court in the case first cited was: "And although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows, that imprisonment must terminate with that adjournment." The language of the higher court in the case last cited was: "And the essential nature of the power also makes clear the cogency and application of the two limitations which were expressly pointed out in *Anderson vs. Dunn*, *supra*, that is, that the power even when applied to subjects which justified its exercise is limited to

imprisonment and such imprisonment may not be extended beyond the session of the body in which the contempt occurred." Except where regulated by express constitutional provisions, it is found to be the rule for the States of the American Union that the imprisonment terminates with the legislative session. As the Supreme Court of Kansas puts it, "The extent of the punishment to be inflicted, while resting in the discretion of the legislative body imposing it, has never been held to extend beyond fine and imprisonment; and where imprisonment is imposed, it has always been held to terminate with the session of the legislature. * * * The power to imprison the citizen is not to be lightly implied." (In re Davis supra.)

Just as there is no good reason to suppose that the Houses of the Philippine Legislature would be left without the power of self-preservation to be realized through the power to punish for contempt, so is there no good reason to suppose that the principle relative to the termination of the imprisonment, which is acceptable to the House of Commons, the upper House and probably the lower House of the Congress of the United States, and the Houses of the State Legislatures, is not equally applicable to a House of the Philippine Legislature. At this point, it should be explained that the Philippine Legislature meets annually. It convenes on the 16th day of July of every year and continues in session not longer than one hundred days exclusive of Sundays. Each legislature holds three sessions numbered according to their sequence as first, second, or third, as the case may be, (Organic Act, sec. 18; Admin. Code, sees. 94, 98.)

The language of the United States Supreme Court in passing on the duration of the imprisonment for contempt of the Houses of the Congress of the United States, and by analogy on the duration of the imprisonment for contempt to the Houses of the Philippine Legislature, really needs no interpretation. When the court spoke of the imprisonment terminating with "adjournment," the word "adjournment" was clearly used as in the United States Constitution. It is now sought to give to "adjournment" the meaning of "final adjournment" at the end of the triennial legislative period. But this interpretation does not accord with the pronouncements of the United States Supreme Court in the Pocket Veto Case decided only last year. (*Okanogan Indians vs. U. S.*, U. S. Supreme Court, Adv. Op., 503.) Again when the United States Supreme Court spoke of the imprisonment not extending "beyond the session of the body in which the contempt occurred," the word "session" was used in the constitutional sense. A strained and unnatural grammatical construction is not proper. There is not one session either of the Congress of the United States or the Philippine Legislature, but in the case of the latter, there are three distinct and separate sessions.

Giving application now to the exact words of the United States Supreme Court, which it is our bounden duty to do, "the session of the body in which the contempt occurred" was the second session of the Philippine Legislature. That session was adjourned as provided by law, without the resolution affecting Lopez having been enforced. It was this session beyond which the imprisonment could not be extended. When at the next session, the third, the order of arrest was attempted to be resuscitated, the House was without legal right so to proceed. The fact that the House at this third session, without a new hearing and adjudication, passed a confirmatory resolution of the resolution approved at the second session, added, nothing to the legal position of the House. The legislative function to act having ceased with the cessation of the legislative power in a previous session, a resolution could not be revived by mere reapproval.

The proposition previously enunciated will bear analytical reexamination. We have said that the power to find in contempt rests fundamentally on the power of self-preservation. That is true even of contempt of court where the power to punish is exercised on the preservative and not on the vindictive principle. Where more is desired, where punishment as such is to be imposed, a criminal prosecution must be brought, and in all fairness to the culprit, he must have thrown around him all the protections afforded by the Bill of Rights. Proceeding a step further, it is evident that, while the legislative power is perpetual, and while one of the bodies composing the legislative power

disappears only every three years, yet the sessions of that body mark new beginnings and abrupt endings, which must be respected.

Where a person, who is declared in contempt of the House of Representatives at one session of the Legislature, is not committed to prison during that session, it is very doubtful if a new order for his commitment may be made at the next ensuing session of the Legislature. This right has never been exercised by any legislative body deriving from the common law system. On the contrary, the uniform practice of such bodies appears to have proceeded upon the assumption that the power to punish an invasion of legislative privileges ends with the session during which the wrongful act was done. It is true that the rule expressed by the authorities on this point was not formulated with reference to the power of a succeeding session to give effect to the original resolution declaring the offender in contempt, but, as already stated, the practice of English and American legislative bodies speaks loudly against the existence of the power for the House of Representatives in this case. An innovation which experience has shown to be really unnecessary for the protection of the lawmaking body would be most unwise. Occasional acts of personal violence against members of the Legislature will no doubt occur over long periods of time, but their number will not be increased by the conclusion reached in this case, which is either that the offender must be committed to prison by the offended body during its current session, or punishment must be left to the ordinary process of the courts, wherein the penalties inflicted will tend to be more severe in the main than those which would have been imposed by the legislative body itself.

We recur again to the oft-repeated and all controlling thought that the legislative power to punish for contempt arises by implication, is justified only by the right of self-preservation, and is the least possible power adequate to the end proposed. We point out again that where imprisonment is imposed for contempt of a legislative body in the United States, it terminates with the adjournment of the session of the body in which the contempt occurred. We emphasize again the absolute absence of any judicial precedent which acknowledges the right of a legislative body to extend punishment for contempt beyond the adjournment of the session, and that to go against the unanimous authority to the contrary, would be to sanction a power for the Houses of the Philippine Legislature greater than that which any legislative body in the United States, including the Houses of the Congress of the United States, is permitted to exercise. No legal cause for the restraint of the petitioner is shown.

It follows from what has been said that the trial court erred in refusing to grant the writ of habeas corpus and its judgment must be, as it is hereby, reversed, and the record remanded with directions to discharge the petitioner from custody. So ordered, without costs.

Street, and Villa-Real, JJ., concur.

Avanceña, C. J., CONCURRING AND DISSENTING in part:

I agree with the majority opinion that the Legislature has inherent power to commit the petitioner to twenty-four hours' imprisonment for contempt. But I do not agree that the order of commitment can only be executed during the particular session in which the act of contempt was committed. I therefore vote for the affirmance of the judgment appealed from.

This case must be decided in accordance with the doctrine laid down by the United States Supreme Court in *Anderson vs. Dunn*, and ratified in *Marshall vs. Gordon*.

The doctrine referred to is epitomized in the case of *Anderson vs. Dunn* as follows: "And although the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows, that imprisonment must terminate with that adjournment."

From this doctrine it follows, in my judgment, that the imposition of the penalty is limited to the existence of the

legislative body, which ceases to function upon its final periodical dissolution. The doctrine refers to its existence and not to any particular session thereof. This must be so, inasmuch as the basis of the power to impose such a penalty is the right which the Legislature has to self-preservation, and which right is enforceable during the existence of the legislative body. Many causes might be conceived to constitute contempt to the Legislature, which would continue to be a menace to its preservation during the existence of the legislative body against which contempt was committed.

If the basis of the power of the Legislature to punish for contempt exists while the legislative body exercising it is in session, then that power and the exercise thereof must perforce continue until its final adjournment and the election of its successor.

Johns, J., with whom concur Villamor and Ostrand, JJ., CONCURRING AND DISSENTING:

The opinion of Justice Malcolm is well written, exhaustive, and learned, and the authorities which he cites are all good law.

As stated, this case is one of first impression in this court, and from our point of view, the question presented has never been decided by any court. All of the American authorities cited and quoted are founded upon the provisions of the Constitution of the United States or of some one of its states, and there is a marked legal distinction between the rule of construction of a constitutional provision and of a legislative act.

The people of the Philippine Islands have never adopted a constitution, and no constitutional convention has ever been held here. The primary power to adopt a constitution is vested in the people and not in the legislature. The Constitution of the United States was the final result of a constitutional convention composed of delegates from the different states by whom it was prepared and then submitted to the different states for adoption. All of the state constitutions are the results of constitutional conventions.

In Words and Phrases, vol. 2, p. 1462, the word "Constitution" is thus defined:

"A constitution is not the beginning of a country, nor the origin of appropriate rights. It is not the fountain of law, nor the incipient state of government. It grants no rights to the people, but it is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the rights and powers they possessed before the constitution was made, it is but the framework of political government, and necessarily based on the preexisting rights, habits, and modes of thought. (State vs. County Treasurer, 4 S. C. [4 Rich.], 520, 536.)

"When the people associate, and enter into a compact, for the purpose of establishing government, that compact, whatever may be its provisions, or in whatever language it may be written, is the constitution of the state, revocable only by the people, or in the manner they prescribe. It is by this instrument that government is instituted, its departments created, and the powers to be exercised by it conferred. (Bates vs. Kimball [Vt], 2 D. Chip., 77, 84.)

"A constitution is defined by Judge Story to be a fundamental law or basis of government. It is established by the people, in their original sovereign capacity, to promote their own happiness, and permanently to secure their rights, property, independence, and common welfare. (Mc-Koan vs. Devries, 3 Barb., 196, 198 [quoting 1 Story, Const., sees. 338, 339]; Church vs. Kelsey, 7 Sup. Ct, 897, 898; 121 U. S., 282; 30 L. ed., 960.)

"A constitution is the form of government, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The constitution is certain and fixed. It contain the permanent will of the people, and is the supreme law of the land. It is paramount to the legislature, and can be revoked or altered only by the authority that made it. (Vanhorne's Lessee vs. Dorrance, 2 U. S. [2 Dall.], 304, 308; 28 Fed. Cos., 1012; 1 L. ed., 391.)

"A constitution is an act of extraordinary legislation by which the people establish the structure and mechanism of their government, and in which they prescribe fundamental rules to regulate the motions of the several parts. (Eakin vs. Raub [Pa.], 12 Serg. & R., 330, 347.)

"Every state constitution is a compact made by and between the citizens of a state to govern themselves in a certain manner, and the Constitution of the United States is likewise a compact made by the people of the United States to govern themselves, as to general objects, in a certain manner. (Per Jay, C. J., in Chisholm vs. Georgia [Pa.], 2 Pall, 419, 471; 1 L. ed., 440.)

"A constitution is the written charter enacted and adopted by the people of a state through a combination of representatives, or in any way the people may choose to act, by which a government for them is obtained and established, and by which the people give organic and corporate form to that ideal thing, a state, for all time to come, or during the life of the state. (Lynn vs. Polk, 76 Tenn. [8 Lea], 121, 165.)

"The term 'constitution' is used in several senses. In a broad sense of the term, we may speak of a constitution resting upon usage or acquiescence, as in England. But in this country, when we use the term, we refer exclusively to the sovereign acts of the people, acting by conventions or in other constitutional modes. (Horsman vs. Allen, 61 Pac, 796, 799; 129 Cal., 139 [citing Cooley, Const. Lim., pp. 5, 6].)

"In American constitutional law, the word 'constitution' is used in a restricted sense, as implying a written instrument agreed on by the people of the Union, or of any one of the states, as the absolute rule of action and decision for all departments and officers of the government in respect to all of the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or regulation of any such department or officer, or even the people themselves, will be altogether void. (Cline vs. State, 36 Tex. Cr. R., 320, 350; 36 S. W., 1099, 1107; 37 S. W., 722; 61 Am. St. Rep., 850 [citing Cooley, Const. Lim., p. 5].)

"The term 'constitution' implies an instrument of a permanent and abiding nature, and, while it contains provision for revision, it indicates the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. (Li vermore vs. Waite, 36 Pac, 424, 426; 102 Cal., 113; 25 L. R. A., 312.)

"A constitution, 'according to the common acceptance of the word in the United States, may be said to be an agreement of the people, in their individual capacities, reduced to writing, establishing and fixing certain principles for the government of themselves. Among these principles, one of the most important in all our constitutions is to prescribe and limit the objects of legislative power. The people are sovereign, in power they are supreme, and the legislature acts by delegated and circumscribed authority; circumscribed as to its objects, circumscribed as to its extent over these objects.' (State vs. Parkhurst, 9 N. J. Law [4 Halst.], 427 443.)"

Ruling Case Law, vol. 6, p. 16, says:

"2. Definitions and Purposes of Constitutions.—A constitution is a system of fundamental laws or principles for the government of a nation, society, corporation or other aggregation of individuals, and it may be either written or unwritten.. In the United States, the word 'constitution,' as applied to the organization of the federal and state governments always implies a writing, and it is understood in the further restricted sense of an enactment by the direct action of the people providing for the form of government and defining the powers, of the several departments, thus creating a fundamental law which is absolute and unalterable except by the authority from which it emanated. Its purpose is to prescribe the permanent framework of the system of government and assign to the different departments their respective powers and duties, and to establish certain fixed first principles on which government is founded. A constitution differs from a statute in that a statute must provide the details of the subject of which it treats, whereas a constitution usually states general principles, and builds the substantial foundation and general framework of the law and government. In some respects a constitutional provision is a higher form of statutory law, which the people may provide shall be

self-executing where the object is to put it beyond the power of the legislature to render such provision nugatory by refusing to pass laws to carry it into effect.

"3. Permanency and Generality of Constitutions.—A constitution, unlike a statute, is intended not merely to meet existing conditions, but to govern the future. It has been said that the term 'constitution' implies an instrument of a permanent nature. Since it is recognized that its framers could not anticipate conditions which might arise thereafter in the progress of the nation, and could not establish all the law which from time to time might be necessary to conform to the changing conditions of a community, as a rule a constitution does not deal in details, but enunciates the general principles and general directions which are intended to apply to all new facts that may come into being, and which may be brought within those general principles or directions. It has been said that it would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur, and that it would have deprived the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. Although the rigidity of a written constitution may at times obstruct progress, its stability is intended to protect the people from frequent and violent fluctuations of public opinion."

The same rule is also laid down in *Corpus Juris*.

The people of the Philippine Islands have never adopted a constitution or held a constitutional convention, and it must be conceded that any powers or duties which the Philippine Legislature may have were conferred upon it by Acts of Congress of the United States, and that Congress is powerless to adopt or even amend the Constitution of the United States or of any State of the United States, much less to adopt a constitution for the Philippine Islands. In the final analysis, any power which the Philippine Legislature may have is not derived from a constitution.

From an examination of the United States authorities cited in Justice Malcolm's opinion, it will be found that all of them are based upon the Constitution of the United States or of a state constitution, and that, for such reasons in the cases cited, the court have held that the legislature, acting and sitting under a constitution, for its own preservation, has limited, inherent power to punish for contempt.

As Ruling Case Law says:

"A constitution differs from a statute in that a statute must provide the details of the subject of which it treats, whereas a constitution usually states general principles, and builds the substantial foundation and general framework of the law and government."

As stated in Words and Phrases above quoted:

"The constitution is certain and fixed. It contains the permanent will of the people, and is the supreme law of the land. It is paramount to the legislature, and can be revoked or altered only by the authority that made it."

While the courts have held that in a certain class of cases, the Legislature, sitting and acting under a constitution, has the inherent power to punish for contempt, no court has ever held that the Legislature can invest a legislative act with that inherent power, and that would be especially true of a criminal law or an act of a criminal nature.

The facts in the instant case are important.

The resolution of the Philippine Legislature upon which the petitioner was tried and convicted is as follows:

* * * * *

" 'Whereas, on October 23, 1929, Candido Lopez attacked and assaulted, without any justification, the Honorable Jose D. Dimayuga, who was then and is now a member of the House of Representatives of the Philippine Islands, while said Representative was going to the hall of the House of Representatives to attend

the sessions which were then about to begin, as a result of which attack and assault said Representative was unable to attend the sessions on that day and those of the two days next following, by reason of the threats which Mr. Candido Lopez made against said Representative, Honorable Jose D. Dimayuga;

"Whereas, those acts of aggression and assault were committed by the aforesaid Mr. Candido Lopez knowing full well as he then knew that said Representative was and is one of the members of the House of Representatives, who was then going to the hall of said House to attend the sessions thereof which were about to begin at the moment of the aggression;" "

* * * * *

This is a quasi-criminal proceeding in which there is no presumption of fact in favor of the prosecution. All of such presumptions are in favor of the petitioner, and it appears that at the time the alleged acts were committed, the Legislature was not sitting in actual session. Neither is it alleged that they were committed in the legislative halls or even in the legislative building. Hence, analyzing the specific charge, we have this situation. The petitioner assaulted a member of the Legislature who was en route to the legislative building to attend a session of the Legislature which had not been convened or called to order, and it was for the commission of such an assault that he was tried, convicted, and sentenced by the Legislature to twenty-four hours in Bilibid Prison.

It is conceded that on October 9, 1907, the Philippine Commission, which was created by an Act of Congress, enacted Act No. 1755, which is as follows: "No. 1755.—An Act to prohibit the disturbance of the Philippine Commission, the Philippine Assembly, or of any provincial board or municipal or township council; to punish disorderly conduct in the immediate view or presence of said bodies; to punish the fraudulent altering of the draft of any bill, resolution, ordinance, or act pending before or enacted by any such body or the Philippine Legislature; to compel the attendance of witnesses and the production of evidence before the Philippine Commission or Philippine Assembly, or before any committee of either or both said bodies, and for other purposes.

"By authority of the United States, be it enacted by the Philippine Commission, that:

"Section 1. Any person who willfully or by force or fraud prevents or attempts to prevent the meeting of the Philippine Commission or the organizing or meeting of the Philippine Assembly or of any Insular legislative body of the Philippine Islands hereafter established, or the meeting or organizing of any provincial board or municipal or township council, and any person who willfully disturbs the Philippine Commission or the Philippine Assembly, or any Insular legislative body of the Philippine Islands hereafter established, or any provincial board or municipal or township council, while in session, or who is guilty of any disorderly conduct in the immediate view or presence of any such body tending to interrupt the proceedings of such body or to impair the respect due to its authority, shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than five years, or by both, in the discretion of the court."

* * * * *

That is very broad and comprehensive. It not only applies to persons who by force or fraud prevent or attempt to prevent the meetings of the Philippine Commission or any Insular, legislative body, but it goes further and applies to any person "who is guilty of any disorderly conduct in the immediate view or presence of any such body tending to interrupt its proceedings," or "to impair the respect due to its authority." For the commission of any such acts, the person "shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than five years, or by both, in the discretion of the court." Among the first things which the Philippine Commission did was to enact this law which has been in force ever since. By its own act the Legislature vested the power and authority in the courts to try, decide, and punish the identical act for which the Legislature itself tried and convicted the petitioner. But it is contended that the Legislature has the inherent power to punish for contempt, and that it could not delegate that power to the courts. There would be much force in that contention, if

the Legislature was acting under and was a creature of a constitution.

The fact that said Act No. 1755 was approved by the Philippine Commission on October 9, 1907, seven days before the organization of the Philippine Assembly, is not without significance. For it is to be presumed that the American members of the then Philippine Commission were aware of the existing jurisprudence as to the inherent power of the legislative bodies in the United States to punish for contempt, and yet they deemed it wise to pass said Act, thus indicating that the Philippine Assembly then about to be inaugurated ought not to possess the same inherent power to punish for contempt third persons. Not only this. On March 10, 1917, the Philippine Legislature approved Act No. 2711, otherwise known as the Administrative Code, section 102 of which provides:

"Sec. 102. Contempt, of legislative body or committee.— Any person who, being summoned to attend as a witness before the Philippine Legislature, or either House thereof, or before any committee of either of said bodies lawfully clothed with authority to take testimony, fails or refuses, without legal excuse, to attend pursuant to such summons, and any person who, being present before any such body or committee, willfully refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce, upon reasonable notice, any material and proper books, papers, documents, records, or other evidence in his possession or under his control, required by any such body, shall be punished by a fine not to exceed one thousand pesos, or imprisonment not to exceed six months, or both such fine and imprisonment."

Assuming again that the Philippine Legislature was also aware of the inherent power of the United States Congress and of the State Legislatures to punish contumacious witnesses for contempt, the inclusion of the above-quoted section in the Administrative Code clearly shows that said Philippine Legislature never considered itself possessed of such inherent power to punish third persons; otherwise such section of the Administrative Code would have been entirely superfluous.

We frankly concede that, where under a constitution the Legislature is vested with and has the inherent power to punish for contempt, the Legislature cannot delegate that power, for the simple reason that the power of the Legislature is inferior and subordinate to that of the constitution. It is for such reasons that the Legislature cannot adopt, modify or amend a constitution. The power to do that is vested in the higher authority of the sovereign people.

It will be noted that in none of the authorities cited in the opinion of Justice Malcolm is any mention or reference made to the provisions in Act No. 1755 or of any similar provisions. In fact, for aught that appears, there is no such or similar provisions in the laws of any other country, and such provisions are sui generis to the Philippine Islands. It is very apparent upon its face that the purpose and intent of Act No. 1755 was to vest the courts with the power to try and punish the alleged acts, and to do the very thing which the Legislature itself tried to do in this case. If, as now claimed, the Legislature has all of that inherent power, why was Act No. 1755 enacted? And why did it give the courts the power to try and punish for such offenses? Act No. 1755 was enacted for a specific purpose and to meet conditions then existing. Its terms and provisions are broad and drastic, and its punishment is severe, and it was designed to protect the person and body of a member of the Legislature or even of the city council from an assault or bodily harm, and for twenty-three years it has answered well its purpose.

Much stress is attached to the contention that the Legislature has such inherent power for its own protection and preservation. We frankly concede that, if the alleged acts were committed within the halls of the Legislature and while it was sitting in actual session, it would then have the power to maintain and preserve order and to do anything necessary for the conduct of its own business or its own preservation. But, as stated, the alleged acts were not committed while the Legislature was sitting in actual session, and it does not appear from the record that they were committed even in the legislative building, and assuming everything to be true, as alleged, it does not appear that they resulted in any real or substantial interference with the proceedings of the Legislature.

Article 587 of the Penal Code provides:

"The penalty of *arresto menor* shall be imposed upon any person who shall inflict upon another any physical injuries which shall prevent the person injured from working for a period of from one to seven days, or shall make medical attendance necessary for the same period."

Under the provision of this article, if guilty as charged, the petitioner could be convicted and sentenced to from one to thirty days' imprisonment.

Hence, in the final analysis, if the Legislature has the power to punish a third person for contempt for an assault upon one of its members outside of its legislative hall, that person would be guilty of three distinct offenses for one and the same act. He could be tried and convicted by the Legislature itself for an assault upon one of its members, and sentenced to any period not beyond the legislative session. He could then be tried and convicted by the court for the same identical offense under the provisions of Act No. 1755, and fined not more than P2,000 or imprisonment for not more than five years, or by both, in the discretion of the court. He could also be tried and convicted by the court for that same offense under article 587 of the Penal Code, and sentenced to from one to thirty days' imprisonment.

We concede that the United States decisions lay down the rule that where the Legislature, acting and sitting under a constitution, has the inherent power to punish for contempt, that a conviction for that offense is not a bar to a prosecution in the court for the crime of assault and battery, which in the instant case would correspond to article 58.7 of the Penal Code. Be that as it may, none of those decisions are in point. First, for the simple reason that the Legislature of the Philippine Islands is not sitting or acting under a constitution, but is a creature of an Act of Congress of the United States, which has no power to adopt or even amend the Constitution of the United States or any State of the United States, much less to adopt a constitution for the Philippine Islands. Second, that the people of the Philippine Islands have never adopted or held a constitutional convention. Third, none of those decisions are founded upon Act No. 1755 or any similar provision. They are all based upon the inherent power of a legislature under a constitution. Fourth, to permit the exercise of that alleged inherent power of the Philippine Legislature under an Act of Congress would subject the offender to three different penalties. One by the Legislature itself, one under Act No. 1755, and the third under article 587 of the Penal Code, and all for an act committed outside of the legislative halls, and while the Legislature was not sitting in actual session.

We are clearly of the opinion, upon the admitted facts, that the Philippine Legislature had no legal right to try much less convict and sentence the petitioner to imprisonment in Bilibid. That when Act No. 1755 was enacted it vested in the courts, by its express terms and provisions, the power to try and punish contemptuous acts committed on one of its members outside of the legislative halls and while the Legislature was not sitting in actual session, in addition to which the alleged offender could also be tried, convicted, and punished under article 587 of the Penal Code.

For such reasons, the alleged trial, conviction, and sentence of the Legislature is null and void, and the writ should be granted, and to that extent we concur in the result. From this point of view, it is unnecessary to discuss or express an opinion on the remaining question.

ROMUALDEZ, J., CONCURRING AND DISSENTING in part:

With due respect to the majority opinion, I believe the judgment appealed from should be affirmed. It is alleged in the return to the writ that on October 23, 1929, while Representative Jose Dimayuga was proceeding to the House of Representatives to attend the session, the petitioner herein knowingly assaulted said representative, thereby preventing him from attending the session of the house that day, and on two other days.

I agree with the majority opinion that these facts must be admitted, inasmuch as they were neither duly traversed nor contradicted, and the petition to present evidence to the contrary having been denied without an exception from the petitioner.

I agree with the writer of the opinion that the House of Representatives has sufficient power to take disciplinary action in cases of contempt like the one under consideration. Such power is inherent in the right of the Legislature to self-preservation and the exercise of its functions; and in the particular case in question, I am of opinion that, in view of the facts of the case, the authority exercised is also a necessary consequence derived a fortiori from the immunity of a member of the legislature from arrest for certain crimes and misdemeanors, while attending the legislative session or going to or from the sessions.

But I dissent from the majority opinion where it denies to the House of Representatives the right to exercise that power during the present session, which is a session of the same legislature, though subsequent to that wherein the act of contempt was committed. In my opinion, where, as in the case before us, the members composing the legislative body against which the contempt was committed have not yet completed their three-year term, the House may take action against the petitioner herein.

I see nothing contrary to this conclusion in the cases of *Anderson vs. Dunn* (6 Wheaton, 230), and *Marshall vs. Gordon* (243 U. S., 521), cited in the majority opinion, in the judgment appealed from, and in the briefs filed by both parties. The restrictions laid upon the penalty for this kind of contempt, as I understand them, are merely that the punishment is limited to imprisonment, and that such imprisonment shall not extend beyond the session when service begins. These limitations have nothing to do with the exercise of the power to punish for contempt, but only with the duration of the imprisonment. That is why it was said in *Marshall vs. Gordon*:

"And the essential nature of the power also makes clear the cogency and application of the two limitations which were expressly pointed out in *Anderson vs. Dunn*, supra; that is, that the power, even when applied to subjects which justified its exercise, is limited to imprisonment, and such imprisonment may not be executed beyond the session of the body in which the contempt occurred." (Italics ours.,)

If it were intended to limit the power to punish by imprisonment the passage italicized should have read: "and the power may not be exercised" (using "the power" instead of "such imprisonment" and "exercised" instead of "executed" as relating to power) "beyond the session of the body in which the contempt occurred."

The timeliness of exercising that power at a session subsequent to that when the contempt occurred, in general, is a matter strictly within the discretion of the offended legislative body, and courts cannot pass upon it unless there is evidence of a manifest and absolute disregard of discretion, which does not appear from the record in the present case. The facts of record show that the contempt was not punished during the session when it occurred, not because of negligence or condonation of the offense by the House, but because the petitioner could not be arrested.

The following is a pertinent ruling from the case of *Marshall vs. Gordon*, cited above:

"On the contrary, when an act is of such a character as to subject it to be dealt with as a contempt under the implied authority, we are of opinion that jurisdiction is acquired by Congress to act on the subject, and therefore there necessarily results from- this power the right to determine, in the use of legitimate and fair discretion, how far from the nature and character of the act there is necessity for repression to prevent immediate recurrence; that is to say, the continued existence of the interference or obstruction to the exercise of the legislative power. And of course in such case, as in every other, unless there be manifest and absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference." (Italics ours.)

The allegation that the petitioner was not duly heard is contradicted by the return to the writ which has not in any way been denied or controverted.

The warrant of arrest signed by the Speaker of the House is perfectly valid and the lack of an express oath taken in the act does not detract from the legal effect thereof, as shown by the Attorney-General in his brief, citing the case of *McGrain vs. Daugherty* (273 U. S., 135).

There is no merit in the allegation that the respondent as a Constabulary officer has no authority to return the warrant of arrest. This is one of his functions provided in section 831 of the Administrative Code, and the Constabulary Manual adopted under the provision of section 843 of said Code.

These are the considerations upon the strength of which I believe that the power which the majority of this court has recognized in the House of Representatives was legally exercised in the case at bar.

I vote for the affirmance of the judgment appealed from.

JOHNSON, J., DISSENTING:

This is an appeal from a very interesting and instructive opinion of Judge Mariano Albert denying the petition of the appellant for the writ of habeas corpus. The facts upon which the petition was based are simple and may be stated briefly as follows:

The appellant was arrested on the morning of September 19, 1930, by the respondent by virtue of a warrant of arrest signed by the Honorable Manuel Roxas, Speaker of the House of Representatives, in pursuance of a resolution of said House approved September 16, 1930. The warrant of arrest was issued by reason of an alleged act of contempt against the Legislature committed on October 23, 1929, upon the person of Representative Jose Dimayuga by the petitioner, during its sessions in 1929. The appellant now asks that said warrant of arrest be declared illegal and void and that he be released from said arrest.

Upon a full and careful consideration of the facts and the law, Judge Mariano Albert denied the petition and dismissed the same with costs, and ordered the petitioner remanded to the custody of the respondent for compliance with the order of the Speaker of the House of Representatives. From that decision the petitioner appealed, and now, through his attorneys, makes two principal contentions: (a) That the Legislature of the Philippine Islands has no authority to punish him, for contempt, and (6) that the alleged contempt having been committed during the former sessions of the Legislature (1929), the Legislature which imposed the punishment during its period of sessions in 1980 is without right or authority to impose the punishment complained of.

Upon these questions practically every member of this court has presented a separate opinion covering a wide range of subjects but differing in their conclusions. Much has been said which, in my opinion, is not germane to the subject before us.

The Legislature of the Philippine Islands is a duly organized legislative body under an Act of the Congress of the United States. Its authority to act as a legislative body is not even now questioned by any of the parties in this action. It is a body elected by the people for a definite period, with authority to hold sessions and to enact laws upon the subjects delegated to it. Being a regularly organized legislative body, we think the general rules governing such bodies should be applied. The legislative body of the Philippine Islands is composed of two branches under the law, (a) a House of Representatives and (&) a Senate.

Cooley, in his very valuable work on Constitutional Limitations, said:

"Each house has also the power to punish members for disorderly behavior, and other contempts of its authority, as well as to expel a member for any cause which seems to the body to render it unfit that he

continue to occupy one of its seats. This power is generally enumerated in the constitution among those which the two houses may exercise, but it need not be specified in that instrument, since it would exist whether expressly conferred or not. It is 'a necessary and incidental power to enable the house to perform its high functions, and it is necessary to the safety of the state. It is a power of protection. A member may be physically, mentally, or morally wholly unfit; he may be affected with a contagious disease, or insane, or noisy, violent, and disorderly, or in the habit of using profane, obscene, and abusive language.' And, 'independently of parliamentary customs and usages, our legislative houses have the power to protect themselves by the punishment and expulsion of a member;' and the courts cannot inquire into the justice of the decision, or even so much as examine the proceedings to see whether or not the proper opportunity for defense was furnished.

"Each house may also punish contempts of its authority by other persons, where they are committed in its presence, or where they tend directly to embarrass or obstruct its legislative proceedings; and it requires for the purpose no express provision of the constitution conferring the authority. It is not very well settled what are the limits to this power; and in the leading case in this country the speaker's warrant for the arrest of the person adjudged guilty of contempt was sustained, though it did not show in what the alleged contempt consisted. In the leading English case a libelous publication concerning the house was treated as a contempt; and punishment has sometimes been inflicted for assaults upon members of the house, not committed in or near the place of sitting, and for the arrest of members in disregard of their constitutional privilege.

"When imprisonment is imposed as a punishment, it must terminate with the final adjournment of the house, and if the prisoner be not then discharged by its order, he may be released on habeas corpus." (Cooley's Constitutional Limitations, pp. 190, 191, 7th ed.)

Accepting as I do the eminent authority of Judge Cooley and the cases cited in support of his argument, I see no escape from the conclusion that the Legislature of the Philippine Islands has inherent power to punish for contempt all such cases as Judge Cooley mentions. Many other cases might be cited in support of the conclusions of Judge Cooley. Many of the other decisions are cited and clearly discussed by Judge Mariano Albert. I feel that no comments are necessary to sustain the splendid argument and the wise conclusions of Judge Albert on that particular question.

Granting that the Legislature has inherent power to punish for contempt, we pass to a discussion of the second question, to wit, When must the punishment imposed be carried into effect? Upon that question Judge Cooley, as we have stated above, makes the statement: "When imprisonment is imposed as a punishment, it must terminate with the final adjournment of the house, and if the prisoner be not then discharged by its order, he may be released on habeas corpus." (Jefferson's Manual, sec. 18; Richard's Case, 1 Lev., 165.)

If I understand the statement of Judge Cooley and the authorities he cites, he means that a legislative body having the inherent power to punish for contempt, may punish contempts at any time before the final adjournment of that body. But what do we mean by the phrase "final adjournment of that body?" It simply means that during the existence of the particular legislature it may punish for contempt at any time before "final adjournment." If I understand correctly the authorities cited by Judge Cooley, "final adjournment" means the time when a particular legislative body goes out of existence as a legislative body. To illustrate: the legislature may be elected for a period of three years and no more. At the expiration of three years, that body ceases to exist as a legislative entity. In other words, it has gone out of existence upon final adjournment, and of course having gone out of existence as a legislative body, it ceases to have any legislative authority, and not having any legislative authority or authority as a legislature, its power to carry into effect any of its orders has ceased and it is powerless to enforce any of its orders made during its legal existence.

If an examination of the journals of the legislature may be made, we will find that a distinction is made between

(a) daily adjournments of the sessions, (b) adjournment at the end of each period of sessions and (c) final adjournment, by virtue of which the legislature goes out of existence. For the daily adjournment, the following language is used: "Se levanto la sesion * * *, acordandose celebrar la siguiente el.....de....., 19....." The language for the adjournment of the legislature at each period of sessions is as follows: "El Presidente declaro levantada la sesion sine die del primer periodo de sesiones * * *," while the language used for the final adjournment is: "Sr. Presidente:Ahora, caballeros de la Camara, de acuerdo con la resolucion concurrents adoptada por a'mbas camaras, se levanta la sesion de la Camara de Representantes sine die."

If we may be permitted to examine the Congressional Record of the Congress of the United States, we will find that different languages are used for (a) daily adjournment, (&) adjournment at the end of each period of sessions, and (c) final adjournment, by virtue of which it goes out of existence. For daily adjournment the following language is used: "Accordingly the House, under the order heretofore made, adjourned until tomorrow, etc." For the adjournment at the end of each period of sessions, the following language is used "The Chair (the Speaker) declares the first session of the Sixty-fourth Congress adjourned without day." For the final adjournment, which terminates the existence of that particular body, the following language is used: "I (the Speaker) declare the House of Representatives of the Sixty-third Congress adjourned without day."

After an examination of the journals of the Legislature of the Philippine Islands as well as those of the Congress of the United States, we observe that there are three classes of adjournments of sessions of those legislative bodies: (a) Adjournment of the sessions from day to day, (&) adjournment of sessions from one period to another, of the same legislature or Congress, and (c) final adjournment of the particular legislature or Congress, which means that that particular entity, as a legislative body, has ceased to exist and has no further power as a legal entity for the purposes of legislation.

If I understand the facts in this case, the Legislature which authorized Manuel Roxas, its Speaker, to order the arrest of the appellant on September 16, 1930, is exactly the same legislative entity against which the appellant committed contempt in 1929, and had not finally adjourned at the time the present petition for the writ of habeas corpus was presented to the Court of First Instance of the City of Manila. Said Legislature, therefore, at the time of the consideration of the petition for the writ of habeas corpus, still had full authority to carry into effect, through proper channels, the order of arrest complained of.

There has been a good deal of discussion concerning the sessions of the Legislature and its right to punish for contempt after the close of the sessions at which the contempt was committed. In my judgment the argument which supports the contention that the power to punish has ceased to exist, after the close of the sessions at which the contempt was committed, is not well supported, unless the close of the period of sessions is a final adjournment or a sine die adjournment, which means that that particular legislative body, as a legislative entity, has gone out of existence. In my judgment there is no support for the contention that the close of a particular period of sessions deprives the legislative body of its right to punish for contempt committed during that period.

In view of all of the foregoing, I am forced to the conclusion that the judgment appealed from should be affirmed, with costs.

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