

RODOLFO A. SCHNECKENBURGER, PETITIONER, VS. MANUEL V. MORAN, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENT.*G. R. No. 44896. July 31, 1936*

Ponente: ABAD SANTOS, J.

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The petitioner was duly accredited honorary consul of Uruguay at Manila, Philippine Islands on June 11, 1934. He was subsequently charged in the Court of First Instance of Manila with the crime of falsification of a private document. He objected to the jurisdiction of the court on the ground that both under the Constitution of the United States and the Constitution of the Philippines the court below had no jurisdiction to try him. His objection having been overruled, he filed this petition for a writ of prohibition with a view to preventing the Court of First Instance of Manila from taking cognizance of the criminal action filed against him.

In support of this petition counsel for the petitioner contend (1) That the Court of First Instance of Manila is without jurisdiction to try the case filed against the petitioner for the reason that under Article III, section 2, of the Constitution of the United States, the Supreme Court of the United States has original jurisdiction in all cases affecting ambassadors, other public ministers, and consuls, and such jurisdiction excludes the courts of the Philippines; and (2) that even under the Constitution of the Philippines original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, is conferred exclusively upon the Supreme Court of the Philippines.

This case involves no question of diplomatic immunity. It is well settled that a consul is not entitled to the privileges and immunities of an ambassador or minister, but is subject to the laws and regulations of the country to which he is accredited. (Ex parte Baiz, 135 U. S., 403; 34 Law. ed., 222.) A consul is not exempt from criminal prosecution for violations of the laws of the country where he resides. (U. S. vs. Ravara, 2 Dall, 297; 1 Law. ed., 388; Wheaton's International Law [2d ed.], 423.) The substantial question raised in this case is one of jurisdiction.

1. We find no merit in the contention that Article III, section 2, of the Constitution of the United States governs this case. We do not deem it necessary to discuss the question whether the constitutional provision relied upon by the petitioner extended *ex proprio vigore* over the Philippines. Suffice it to say that the inauguration of the Philippine Commonwealth on November 15, 1935, has brought about a fundamental change in the political and legal status of the Philippines. On the date mentioned the Constitution of the Philippines went into full force and effect. This Constitution is the supreme law of the land. Not only the members of this court but all other officers, legislative, executive and judicial, of the Government of the Commonwealth, are bound by oath to support the Constitution. (Article XIII, section 2.) This court owes its own existence to that great instrument, and derives all its powers therefrom. In the exercise of its powers and jurisdiction, this court is bound by the provisions of the Constitution. The Constitution provides that the original jurisdiction of this court "shall include all cases affecting ambassadors, other public ministers, and consuls." In deciding the instant case this court cannot go beyond this constitutional provision.

2. It remains to consider whether the original jurisdiction thus conferred upon this court by the Constitution over cases affecting ambassadors, other public ministers, and consuls, is exclusive. The Constitution does not define the jurisdiction of this court in specific terms, but merely provides that "the Supreme Court shall have such original and appellate jurisdiction as may be possessed and exercised by the Supreme Court of the Philippine Islands at the time of the adoption of this Constitution." It then goes on to provide that the original jurisdiction of this court "shall include all cases affecting ambassadors, other public ministers, and consuls."

In the light of the constitutional provisions above adverted to, the question arises whether the original jurisdiction possessed and exercised by the Supreme Court of the Philippine Islands at the time of the adoption of the Constitution was exclusive.

The original jurisdiction possessed and exercised by the Supreme Court of the Philippine Islands at the time of the adoption of the Constitution was derived from section 17 of Act No. 136, which reads as follows: "The Supreme Court shall have original jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and quo warranto in the cases and in the manner prescribed in the Code of Civil Procedure, and to hear and determine the controversies thus brought before it, and in other cases provided by law." Jurisdiction to issue writs of quo warranto, certiorari, mandamus, prohibition, and habeas corpus was also conferred on the Courts of First Instance by the Code of Civil Procedure. (Act No. 190, sees. 197, 217, 222, 226, and 525.) It results that the original jurisdiction possessed and exercised by the Supreme Court of the Philippine Islands at the time of the adoption of the Constitution was not exclusive of, but concurrent with, that of the Courts of First Instance. Inasmuch as this is the same original jurisdiction vested in this court by the Constitution and made to include all cases affecting ambassadors, other public ministers, and consuls, it follows that the jurisdiction of this court over such cases is not exclusive.

The conclusion we have reached upon this branch of the case finds support in the pertinent decisions of the Supreme Court of the United States. The Constitution of the United States provides that the Supreme Court shall have "original jurisdiction" in all cases affecting ambassadors, other public ministers, and consuls. In construing this constitutional provision the Supreme Court of the United States held that the "original jurisdiction" thus conferred upon the Supreme Court by the Constitution was not an exclusive jurisdiction, and that such grant of original jurisdiction did not prevent Congress from conferring original jurisdiction in cases affecting consuls on the subordinate courts of the Union. (*U. S. vs. Ravara*, supra; *Bdrs vs. Preston*, 111 U. S., 252; 28 Law. ed., 419.)

3. The laws in force in the Philippines prior to the inauguration of the Commonwealth conferred upon the Courts of First Instance original jurisdiction in all criminal cases to which; a penalty of more than six months' imprisonment or a fine exceeding one hundred dollars might be imposed. (Act No. 136, sec. 56.) Such jurisdiction included the trial of criminal actions brought against consuls for, as we have already indicated, consuls, not being entitled to the privileges and immunities of ambassadors or ministers, are subject to the laws and regulations of the country where they reside. By Article XV, section 2, of the Constitution, all laws of the Philippine Islands in force at the time of the adoption of the Constitution were to continue in force until the inauguration of the Commonwealth; thereafter, they were to remain operative, unless inconsistent with the Constitution, until amended, altered, modified, or repealed by the National Assembly. The original jurisdiction granted to the Courts of First Instance to try criminal cases was not made exclusive by any law in force prior to the inauguration of the Commonwealth, and having reached the conclusion that the jurisdiction conferred upon this court by the Constitution over cases affecting ambassadors, other public ministers, and consuls, is not an exclusive jurisdiction, the laws in force at the time of the adoption of the Constitution, granting the Courts of First Instance jurisdiction in such cases, are not inconsistent with the Constitution, and must be deemed to remain operative and in force, subject to the power of the National Assembly to amend, alter, modify, or repeal the same. (*Asiatic P.*

Co. v8. Insular Collector of Customs, U. S. Supreme Court [Law. ed.], Adv. Ops., vol. 80, No. 12, pp. 620, 623.)

We conclude, therefore, that the Court of First Instance of Manila has jurisdiction to try the petitioner, and that the petition for a writ of prohibition must be denied. So ordered.

Avanceña, C. J., Vlla-Real, Imperial, Diaz, and Recto, JJ., concur.

CONCURRING

LAUREL, J. :

In my humble opinion, there are three reasons why the jurisdiction of this court over the petitioner in the instant case is concurrent and not exclusive. The strictly legal reason is set forth in the preceding illuminating opinion. The other reasons are (a) historical and based on what I consider is the (b) theory upon which the grant of legislative authority under our Constitution is predicated.

(a) As the provision in our Constitution regarding jurisdiction in cases affecting ambassadors, other public ministers, and consuls, has been taken from the Constitution of the United States, considerable light would be gained by an examination of the history and interpretation thereof in the United States.

The fifth resolution of the New Jersey plan (Paterson resolutions of June 15, 1787) gave the Supreme Court of the United States, the only national court under the plan, authority to hear and determine "by way of appeal, in the dernier resort * * * all cases touching the rights of ambassadors * * *." This clause, however, was not approved. On July 18, the Convention of 1787 voted an extraordinarily broad jurisdiction to the Supreme Court extending "to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony." This general proposition was considerably narrowed by Randolph in his draft of May 29 which, however, did not mention anything about ambassadors, other public ministers and consuls. But the Committee of Detail, through Butledge, reported on August 6 as follows: "Article XI, Section 3. The jurisdiction of the Supreme Court shall extend * * * to all cases affecting ambassadors, other public ministers and consuls; * * * In * * * cases affecting ambassadors, other public ministers and consuls, * * * this jurisdiction shall be original * * *." On September 12, the Committee on Style reported the provision as follows: "Article III, Section 2. The judicial power shall extend * * * to all cases affecting ambassadors, other public ministers and consuls * * * In (all) cases affecting ambassadors, other public ministers and consuls * * * the Supreme Court shall have original jurisdiction." This provision was approved in the convention with hardly any amendment or debate and is now found in clause 2, section 2 of Article III of the Constitution of the United States, (The Constitution and the Courts, Article on "Growth of the Constitution", by William M. Meigs, New York, 1924, vol. I, pp. 228, 229. See also Farrand, Records of the Federal Convention of 1787, Yale University Press, 1934, 3 vols.; Warren, The Making of the Constitution, Boston, 1928, pp. 534-537.)

The word "original", however, was early interpreted as not exclusive. Two years after the adoption of the Federal Constitution, or in 1789, the First Judiciary Act (Act of September 24, 1789, 1 Stat., c. 20, 687) was approved by the first Congress, creating the United States District and Circuit Courts which were *nisi prius* courts, or courts of first instance which dealt with different items of litigation. The district courts are now the only federal courts of first instance, the circuit courts having been abolished by the Act of March 3, 1911, otherwise known as the Judicial Code. The Judiciary Act of 1787 invested the district courts with jurisdiction, exclusively of the courts of the several states, of all suits against consuls or vice-consuls and the Supreme Court of the United States with original but not exclusive jurisdiction of all suits in which a consul or vice-consul shall be a party. By the passage of the Act of February 18, 1875 (18 Stat., 470, c. 137), the clause giving the federal courts exclusive jurisdiction was repealed and, since then, state courts have had concurrent jurisdiction with the federal courts over civil or

criminal proceedings against a consul or vice-consul. At the present time, the federal courts exercise exclusive jurisdiction "of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice-consul is a party." (Act of March 3, 1911, 36 Stat., 1156, reenacting sec. 687 of the Act of September 24, 1789; 28 U. S. C. A., sec. 341; Hopkins' Federal Judicial Code, 4th ed., by Babbitt, 1934, sec. 233.) The district courts now have original jurisdiction "of all suits against consuls and vice-consuls." (Act of March 3, 1911, 36 Stat., 1093; 28 U. S. C. A., sec. 41, subsec. 18; Hopkins' Federal Judicial Code, 4th ed., by Babbitt, 1934, sec. 24, par. 18.)

The Judiciary Act of 1789 was one of the early and most satisfactory acts passed by the Congress of the United States. It has remained essentially unchanged for more than 145 years. It was prepared chiefly by Oliver Ellsworth of Connecticut (1 Ann. Cong., 18, April 7, 1789) one of the ablest jurists in the Constitutional Convention, who was later Chief Justice of the Supreme Court of the United States (1796-1800). It is interesting to note that 10 of the 18 senators and 8 of the members of the House of the first Congress had been among the 55 delegates who actually attended the Convention that adopted the federal Constitution (Warren, Congress, the Constitution and the Supreme Court [Boston, 1935], p. 99). When, therefore, the first Congress approved the Judiciary Act of 1789 vesting in the Supreme Court original but not exclusive jurisdiction of all suits in which a consul or a vice-consul shall be a party, express legislative interpretation as to the meaning of the word "original" as not being exclusive was definitely made and this interpretation has never been repudiated. As stated by the Supreme Court of the United States in *Ames vs. Kansas* (1884), 111 U. S., 449; 4 S. Ct. 437; 28 Law. ed., 482):

"In view of the practical construction put on this provision of the Constitution by Congress, at the very moment of the organization of the government, and of the significant fact that, from 1789 until now, no court of the United States has ever in its actual adjudications determined to the contrary, we are unable to say that it is not within the power of Congress to grant to the inferior courts of the United States jurisdiction in cases where the Supreme Court has been vested by the Constitution with original jurisdiction. It rests with the legislative department of the government to say to what extent such grants shall be made, and it may safely be assumed that nothing will ever be done to encroach upon the high privileges of those for whose protection the constitutional provision was intended, At any rate, we are unwilling to say that the power to make the grant does not exist."

Dicta in some earlier cases seem to hold that the word "original" means "exclusive" and as observed by Justice Field in *United States vs. Louisiana* ([1887], 123 U. S., 36; 8 S. Ct., 17; 31 Law. ed., 69), the question has given rise to some differences of opinion among the earlier members of the Supreme Court of the United States. (See, for instance, dissenting opinion of Iredell, J., in *U. S. vs. Ravara* [1793], 2 Dall., 297; 1 Law. ed., 388.) Reliance was had on more or less general expressions made by Chief Justice Marshall in the case of *Marbury vs. Madison* ([1803], 1 Cranch, 137; 2 Law. ed., 60), where it was said:

"If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original; and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance." But Chief Justice Marshall who penned the decision in this case in 1803 had occasion later, in 1821, to explain the meaning and extent of the pronouncements made in the *Marbury* case. He said:

"In the case of *Marbury vs. Madison* ([1803], 1 Cranch [U. S.], 137, 172; 2 Law. ed., 60), the single question before the court, so far as that case can be applied to this, was, whether the legislature could give this court original jurisdiction in a case in which the Constitution had clearly not given it, and in which no doubt respecting the construction of the article could possibly be raised. The court decided, and we think very properly, that the legislature could not give original jurisdiction in such a case. But, in the reasoning of the court in support of this decision, some expressions are used which go far beyond it. The counsel for *Marbury*

had insisted on the unlimited discretion of the legislature in the apportionment of the judicial power; and it is against this argument that the reasoning of the court is directed. They say that, if such had been the intention of the article, it would certainly have been useless to proceed farther than to define the judicial power, and the tribunals in which it should be vested.' The court says, that such a construction would render the clause, dividing the jurisdiction of the court into original and appellate, totally useless; that 'affirmative words are often, in their operation, negative of other objects than those which are affirmed; and, in this case (in the case of *Marbury vs. Madison*), a negative or exclusive sense must be given to them, or they have no operation at all.' 'It cannot be presumed, adds the court, 'that any clause in the Constitution is intended to be without effect; and, therefore, such a construction is inadmissible, unless the words require it, The whole reasoning of the court proceeds upon the idea that the affirmative words of the clause giving one sort of jurisdiction, must imply a negative of any other sort of jurisdiction, because otherwise the words would be totally inoperative, and this reasoning is advanced in a case to which it was strictly applicable. If in that case original jurisdiction could have been exercised, the clause under consideration would have been entirely useless. Having such cases only in its view, the court lays down a principle which is generally correct, in terms much broader than the decision, and not only much broader than the reasoning with which that decision is supported, but in some instances contradictory to its principle. The reasoning sustains the negative operation of the words in that case, because otherwise the clause would have no meaning whatever, and because such operation was necessary to give effect to the intention of the article. The effort now made is, to apply the conclusion to which the court was conducted by that reasoning in the particular case, to one in which the words have their full operation when understood affirmatively, and in which the negative, or exclusive sense, is to be so used as to defeat some of the great objects of the article. To this construction the court cannot give its assent. The general expressions in the case of *Marbury vs. Madison* must be understood with the limitations which are given to them in this opinion; limitations which in no degree affect the decision in that case, or the tenor of its reasoning." (*Cohens vs. Virginia* [1821], 6 Wheat., 264, 400; 5 Law. ed., 257.)

What the Supreme Court in the case of *Marbury vs. Madison* held then was that Congress could not extend its original jurisdiction beyond the cases expressly mentioned in the Constitution, the rule of construction being that affirmative words of the Constitution declaring in what cases the Supreme Court shall have original jurisdiction must be construed negatively as to all other cases. (See *Ex parte Vallandigham* [1864], 1 Wall., 243, 252; 17 Law. ed., 589; *Martin vs. Hunter's Lessee* [1816], 1 Wheat., 305, 330; 4 Law. ed., 97; *U. S. vs. Haynes* [D. C. Mass., 1887], 29 Fed., 691, 696.) That was all.

It should be observed that Chief Justice Marshall concurred in the opinion rendered in the case of *Davis vs. Packard* ([1833], 7 Pet., 276; 8 Law. ed., 684). In this case the jurisdiction of the state court of New York over a civil suit against a foreign consul was denied solely on the ground that jurisdiction had been conferred in such a case upon the district courts of the United States exclusively of the state courts. Such a ground, says Justice Harlan in *Bors vs. Preston* ([1884], 111 U. S., 252; 4 S. Ct., 407; 28 Law. ed., 419), would probable not have been given had it been believed that the grant of original jurisdiction to the Supreme Court deprived Congress of the power to confer concurrent original jurisdiction in such cases upon subordinate courts of the Union, concluding that the decision in the case "may be regarded as an affirmation of the constitutionality of the Act of 1789, giving original jurisdiction in such cases, also, to District Courts of the United States." Of the seven justices who concurred in the judgment in the case of *Davis*, five participated in the decision of *Osborn vs. Bank of the United States* ([1824], 9 Wheat., 738; 6 Law. ed., 204), also penned by Chief Justice Marshall and relied upon as authority together with *Marbury vs. Madison*, *supra*.

The rule enunciated in *Bors vs. Preston*, *supra*, is the one followed in the United States. The question involved in that case was whether the Circuit Court then existing had jurisdiction under the Constitution and laws of the United States to hear and determine any suit whatever against the consul of a foreign government. Justice Harlan said:

"The Constitution declares that 'The judicial power of the United States shall extend * * * to all cases affecting

ambassadors or other public ministers and consuls;' to controversies between citizens of a state and foreign citizens or subjects; that 'In all cases affecting ambassadors, other public ministers and consuls, * * * the Supreme Court shall have original jurisdiction; and that in all other cases previously mentioned in the same clause "The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make. The Judiciary Act of 1789 invested the District Courts of the United States with jurisdiction, exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offenses of a certain character; this court, with 'Original, but not exclusive, jurisdiction of all suits * * * in which a consul or vice-consul shall be a party;' and (the circuit courts with jurisdiction of civil suits in which an alien is a party. (1 Stat. at L., 76-80.) In this act we have an affirmance, by the first Congress—many of whose members participated in the Convention which adopted the Constitution and were, therefore, conversant with the purposes of its framers—of the principle that the original jurisdiction of this court of cases in which a consul or vice-consul is a party, is not necessarily exclusive, and that the subordinate courts of the Union may be invested with jurisdiction of cases affecting such representatives of foreign governments. On a question of constitutional construction, this fact is entitled to great weight."

In this case of *Bors*, Justice Harlan adopted the view entertained by Chief Justice Taney in the earlier case of *Gittings vs. Crawford* (C. C. Md., 1838; Taney's Dec, 1, 10). In that case of *Gittings*, it was held that neither public policy nor convenience would justify the Supreme Court in implying that Congress is prohibited from giving original jurisdiction in cases affecting consuls to the inferior judicial tribunals of the United States. Chief Justice Taney said:

"If the arrangement and classification of the subjects of jurisdiction into appellate and original, as respects the Supreme Court, do not exclude that tribunal from appellate power in the cases where original jurisdiction is granted, can it be right, from the same clause, to imply words of exclusion as respects other courts whose jurisdiction is not there limited or prescribed, but left for the future regulation of Congress? The true rule in this case is, I think, the rule which is constantly applied to ordinary acts of legislation, in which the grant of jurisdiction over a certain subject-matter to one court, does not, of itself, imply that that jurisdiction is to be exclusive. In the clause in question, there is nothing but mere affirmative words of grant, and none that import a design to exclude the subordinate jurisdiction of other courts of the United States on the same subject-matter." (See also *U. S. vs. Ravara* [1793], 2 Dall., 297; 1 Law. ed., 388; *United States vs. Louisiana* [1887], 123 U. S., 36; 8 S. Ct., 17; 31 Law. ed., 69; *Ex parte Baiz* [1890], 135 U. S., 403; 10 S. Ct, 854; 34 Law. ed., 222, denying writ of prohibition *Hollander vs. Baiz* [D. C. N. Y., 1890]; 41 Fed., 732; *Iasigi vs. Van de Carr* [1897], 166 U. S., 391; 17 S. Ct., 595; 41 Law. ed., 1045; *Graham vs. Strucken* [C. C. N. Y., 1857]; 4 Blatchf., 58; *Lorway vs. Lousada* [D. C. Mass., 1866]; *Fed. Cas.*, No. 8517; *St. Luke's Hospital vs. Barclay* [C. C. N. Y., 1855]; 3 Blatchf., 259; *State of Texas vs. Lewis* [C. C. Tex., 1882], 14 Fed., 65; *State of Alabama vs. Wolffe* [C. C. Ala., 1883], 18 Fed., 836, 837; *Pooley vs. Luco* [D. C. Cal., 1896], 76 Fed., 146.)

It is interesting to note that in the case of *St. Luke's Hospital vs. Barclay*, *supra*, the jurisdiction of circuit courts exclusive of state courts over aliens, no exception being made as to those who were consuls, was maintained. (See 1 U. S. Stat. at L., c. 20, sec. 11, pp. 78, 79.)

From the history of, and the judicial interpretation placed on, clause 2, section 2 of Article III of the Constitution of the United States it seems clear that the word "original" in reference to the jurisdiction of Supreme Court of the United States over cases affecting ambassadors, other public ministers and consuls[^] was never intended to be exclusive as to prevent the Congress from vesting concurrent jurisdiction over cases affecting consuls and vice-consuls in other federal courts.

It should be observed that the Philadelphia Convention of 1787 placed cases affecting the official representatives of foreign powers under the jurisdiction of the Federal Supreme Court to prevent the public peace from being jeopardized. Since improper treatment of foreign ambassadors, other public ministers and consuls may be a casus

belli, it was thought that the federal government, which is responsible for their treatment under international law, should itself be provided with the means to meet the demands imposed by international duty. (Tucker, The Constitution of the United States [1899], vol. II, 760, 772; vide, The Federalist, No. LXXXI, Ashley's Reprint [1917], 415.) Bearing in mind the distinction which international law establishes between ambassadors and other public ministers, on the one hand, and consuls and other commercial representatives, on the other, Congress saw it fit to provide in one case a rule different from the other, although as far as consuls and vice-consuls are concerned, the jurisdiction of the Federal Supreme Court, as already observed, though original is not exclusive. But in the United States, there are two judicial systems, independent one from the other, while in the Philippines there is but one judicial system. So that the reason in the United States for excluding certain courts—the state courts—from taking cognizance of cases against foreign representatives stationed in the United States does not obtain in the Philippines where the court of the lowest grade is as much a part of an integrated system as the highest court.

Let us now turn our attention to our own laws as they affect the case of the petitioner. Undoubtedly Philippine courts are not federal courts and they are not governed by the Judiciary Acts of the United States. We have a judicial system of our own, standing outside the sphere of the American federal system and possessing, powers and exercising jurisdiction pursuant to the provisions of our own Constitution and laws.

The jurisdiction of our courts over consuls is defined and determined by our Constitution and laws which include applicable treaties and accepted rules of the law of nations. There are no treaties between the United States and Uruguay exempting consuls of either country from the operation of local criminal laws. Under the generally accepted principles of international law, declared by our Constitution as part of the law of the nation (Art. II, sec. 3, cl. 2), consuls, vice-consuls and other commercial representatives of foreign nations do not possess the status and can not claim the privileges and immunities accorded to ambassadors and ministers. (Wheaton, International Law, sec. 249; 1 Kent, Commentaries, 44; Story on the Constitution, sec. 1660; Mathews, The American Constitutional System [1932], 204, 205; Gittings vs. Crawford, C. C. Md., 1838; Taney's Dec., 1; Wilcox vs. Luco, 118 Cal., 639; 45 Pac, 676; 2 C. J., 1305; 9 R. C. L., 161.) The only provisions touching the subject to which we may refer are those found in the Constitution of the Philippines. Let us trace the history of these provisions.

The report of the Committee on the Judicial Power, submitted on September 29, 1934, did not contain any provision regarding cases affecting ambassadors, other public ministers and consuls. The draft of the sub-committee of seven of the Sponsorship Committee, submitted on October 20, 1934, however, contains the following provision:

"Article X, Section 2. The Supreme Court shall have such original jurisdiction as may be possessed and exercised by the present Supreme Court of the Philippine Islands at the time of the adoption of this Constitution, which jurisdiction shall include all cases affecting ambassadors, other foreign ministers and consuls* * *."

The Special Committee on the Judiciary, composed principally of Delegates Vicente J. Francisco and Norberto Romualdez, included in its report the provisions which now appear in sections 2 and 3 of Article VIII of the Constitution. Section 2 provides:

"The National Assembly shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers and consuls * * *." And the second sentence of section 3 provides:

"The original jurisdiction of the Supreme Court shall include all cases affecting ambassadors, other public ministers and consuls."

The provision in our Constitution in so far as it confers upon our Supreme Court "original jurisdiction over cases

affecting ambassadors, other public ministers and consuls" is literally the same as that contained in clause 2, section 2 of Article III of the United States Constitution.

In the course of the deliberations of the Constitutional Convention, some doubt was expressed regarding the character of the grant of "original jurisdiction" to our Supreme Court. An examination of the records of the proceedings of the Constitutional Convention show that the framers of our Constitution were familiar with the history of, and the judicial construction placed on, the same provision of the United States Constitution. In order to end what would have been a protracted discussion on the subject, a member of the Special Committee on the Judiciary gave the following information to the members of the Convention:

"* * * gr presidente, a fin de poder terminar con el Artfculo 2, el Comite esta dispuesto a hacer constar que la interpretation que se debe dar a la Ultima parte de dicho artfculo es la misma interpretaci6n que siempre se ha dado a semejante disposition en la Constituci6n de los Estados Unidos." (January 16, 1935.) Without further discussion, the provision was then and there approved.

It thus appears that the provision in question has been given a well-settled meaning in the United States—the country of its origin. It has there received definite and hitherto unaltered legislative and judicial interpretation. And the same meaning was ascribed to it when incorporated in our own Constitution. To paraphrase Justice Gray of the Supreme Court of the United States, we are justified in interpreting the provision of the Constitution in the light of the principles and history with which its framers were familiar. (*United States vs. Wong Kin Ark* [1897], 169 U. S., 649; 18 S. Ct, 456; 42 Law. ed., 890, cited with approval in *Kepner vs. United States*, a case of Philippine origin [1904]; 195 U. S., 100; 49 Law. ed., 114.)

(b) What has been said hereinabove is not unnecessary attachment to history or idolatrous adherence to precedents. In referring to the history of this provision of our Constitution it is realized that historical discussion while valuable is not necessarily decisive. Rationally, however, the philosophical reason for the conclusion announced is not far to seek if certain principles of constitutional government are borne in mind. The constitution is both a grant of, and a limitation upon, governmental powers. In the absence of clear and unequivocal restraint of legislative authority, the power is retained by the people and is exercisable by their representatives in the legislature. The general rule is that the legislature possesses plenary power 'for all purposes of civil government. A prohibition to exercise legislative power is the exception. (*Denio, C.,J., in People vs. Draper*, 15 N. Y., 532, 543.) These prohibitions or restrictions are found either in the language used, or in the purposes held in view as well as the circumstances which led to the adoption of the particular provision as part of the fundamental law. (*Ex parte Lewis*, 45 Tex. Crim. Rep., 1; 73 S. W., 811; 108 Am. St. Rep., 929.)

Subject to certain limitations, the Filipino people, through their delegates, have committed legislative power in a most general way to the National Assembly of the nation. In other words, the National Assembly has plenary legislative power in all matters of legislation except as limited by the Constitution. When, therefore, the Constitution vests in the Supreme Court original jurisdiction in cases affecting ambassadors, other public ministers and consuls, without specifying the exclusive character of the grant, the National Assembly is not deprived of its authority to make that jurisdiction concurrent. It has been said that popular government lives because of the inexhaustible reservoir of power behind it. It is unquestionable that the mass of powers of government is vested in the representatives of the people, and that these representatives are no further restrained under our system than by the express language of the instrument imposing the restraint, or by particular provisions which, by clear intendment, have that effect. (*Angara vs. Electoral Commission*, p. 139, ante.) What the Constitution prohibits is merely the deprivation of the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and while it must be admitted, that original jurisdiction if made concurrent no longer remains exclusive, it is also true that jurisdiction does not cease to be original merely because it is concurrent.

It is also quite true that concurrent original jurisdiction in this class of cases would mean the sharing of the Supreme Court with the most inferior courts of cases affecting ambassadors, other public ministers and consuls such that the Supreme Court would have concurrent jurisdiction with the lowest courts in our judicial hierarchy, the justice of the peace courts, in a petty case involving for instance, the violation of a municipal ordinance affecting the parties just mentioned.. However, no serious objection to this result can be seen other than the misinterpreted unwillingness to share this jurisdiction with a court pertaining to the lowest category in our judicial organization. Upon the other hand, the fundamental reasoning would apply with equal force if the highest court of the land is made to take cognizance exclusively of a case involving the violation of the municipal ordinance simply because of the character of the parties affected. After alluding to the fact that the position of consul of a foreign government is sometimes filled by a citizen of the United States (and this is also true in the Philippines) Chief Justice Taney, in *Gittings vs. Crawford*, *supra*, observed:

"It could hardly have been the intention of the statesmen who framed our constitution to require that one of our citizens who had a petty claim of even less than five dollars against another citizen, who had been clothed by some foreign government with the consular office, should be compelled to go into the Supreme Court to have a jury summoned in order to enable him to recover it; nor could it have been intended, that the time of that court, with all its high duties to perform, should be taken up with the trial of every petty offense that might be committed by a consul in any part of the United States; that consul, too, being often one of our own citizens."

Probably, the most serious objection to the interpretation herein advocated is, that considering the actual distribution of jurisdiction between the different courts in our jurisdiction, there may be cases where the Supreme Court may not actually exercise either original—whether exclusive or concurrent—or appellate jurisdiction, notwithstanding the grant of original jurisdiction in this class of cases to the Supreme Court. If, for instance, a criminal case is brought either in a justice of the peace court or in a Court of First Instance against a foreign consul and no question of law is involved, it is evident that in case of conviction, the proceedings will terminate in the Court of Appeals and will not reach the Supreme Court. In this case, the Supreme Court will be deprived of all jurisdiction in a case affecting a consul notwithstanding the grant thereto in the Constitution of original jurisdiction in all cases affecting consuls. This is a situation, however, created not by the Constitution but by existing legislation, and the remedy is in the hands of the National Assembly. The Constitution cannot deal with every casus omissus, and in the nature of things, must only deal with fundamental principles, leaving the details of administration and execution to the other branches of the government. It rests with the National Assembly to determine the inferior courts which shall exercise concurrent original jurisdiction with the Supreme Court in cases affecting ambassadors, other public ministers and consuls, considering the nature of the offense and irrespective of the amount of the controversy. The National Assembly may, as in the United States (Cooley, *Constitutional Law*, 4th ed. [1931], sec. 4, p. 156), provide for appeal to the Supreme Court in all cases affecting foreign diplomatic and consular representatives.

Before the approval of the Constitution, jurisdiction over consuls was exercisable by our courts. This is more so now that the Independence Law and Constitution framed and adopted pursuant thereto are in force. The fact that the National Assembly has not enacted any law determining what courts of the Philippines shall exercise concurrent jurisdiction with the Supreme Court is of no moment. This can not mean and should not be interpreted to mean that the original jurisdiction vested in the Supreme Court by the Constitution is not concurrent with other national courts of inferior category.

The respondent judge of the Court of First Instance of the City of Manila having jurisdiction to take cognizance of the criminal case brought against the petitioner, the writ of prohibition should be denied.

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