

CONSTITUTION DAY

Constitution Day was fittingly observed in Manila last February 8, the date the text of the Constitution was submitted to the Constitutional Convention for its final approval twenty-five years ago. The surviving delegates, happily still more than one-half of the entire constituent body, were properly regaled, in an effort, no doubt, to make them feel that despite the flight of time and the inextinguishable fact that sooner or later they, too, will join the caravan to that "undiscover'd country from whose bourn no traveller returns," the public still remembers them with pride and gratitude and appreciates their enduring work, the monument they reared for the good of the people and the glory of their native land.

But Constitution Day does not and cannot mean much if in reality it merely serves as an occasion to honor and extol the living delegates and to remind the present generation that it has a constitution of its own "sacredly obligatory upon all" in the graphic words of Washington, and that on the eighth day of the second month of every year, the people must observe it and what it stands for. Its real meaning lies far deeper than the mere outward observance of the day. It is a constant and solemn reminder to all the Filipino people that on that particular day they ought and must renew their pledge of dedication to the defense and preservation of so noble a charter so that its spirit shall always prevail and the principles it enunciates and embodies shall remain forever triumphant and inviolate.

In his impressive valedictory address in Spanish in 1935 as well as in his recent silver anniversary speech in English before the delegates and their guests and friends at the Manila Hotel, Senator Claro M. Recto, President of the Constituent Assembly, expressed the hope that future generations of Filipinos will "recognize the loftiness of our motives and the magnitude of our task" and will realize that the ultimate goal as well as the aspiration of the delegates was that God make the Philippines "a happy country." At the same time he voiced his confidence that "the Constitution shall . . . live through the ages as long as the Filipino nation shall live."

His prediction is surely a consummation devoutly to be wished by every true Filipino. Unfortunately, at the rate the Constitution has been flouted and violated for sheer political expediency, one may well wonder how long it will really last. In the past few years, two important cases have been elevated to the Supreme Court to test once again its validity and sacredness as well as the sincerity of some of its leading framers and avowed admirers. On both occasions, it is sad to say, only one of the delegates dared come to its rescue, only one dared raise his voice in protest against the attempt to convert the Constitution into an instrument, a weapon in the struggle for political power.

The first fragrant and in a way most scandalous case was the deliberate "weeding out" by mere legislation — Republic Act No. 1186 passed by the Congress and became a law in mid-night of June 19, 1954 — of Judges-at-large and Cadastral Judges. The only reason for the move was that, as the majority floor leader of the House of Representatives put it, speaking evidently for the rest, the party in power considered them "undesirable" presumably because they did not toe the line.

Former Senator Francisco¹ filed a prohibition case

with the Supreme Court to declare said law unconstitutional and argued that "the constitution has guaranteed the tenure of office of the members of the judiciary by providing that 'the members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office'. Implementing this constitutional provision, the Judiciary Act of 1948 provided that 'No District Judge, Judge-at-Large, or Cadastral Judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist, in the judgment of the Supreme Court, involving serious misconduct or inefficiency, or the removal of said judge from office after the proper proceedings,' and the Rules of Court prescribe the procedure for the removal of judges of the Court of First Instance, which is characterized by due process, for the judge should be informed of the charges against him, and he should be heard in his own defense before he is removed.

But for the Congress to charge judges as incompetent or dishonest, and to legislate them out, the Congress thus playing the role of accuser and judge at the same time, without giving the judges concerned the opportunity to be heard in their own defense, is a procedure not sanctioned by our Constitution and unknown in a government of laws. The constitutional provision securing the tenure of office and salaries of members of the Judiciary were expressly intended as limitations upon the power of the executive and legislative departments to disturb these safeguards of an independent department. They were intended to be fixed and unalterable, subject alone to one limitation which is, the removal of a judge from office for causes of his own creation [serious misconduct] or arising from his personal condition [incapacity to discharge the duties of his office or for having reached the age of 70 years] to be determined by the Supreme Court, not by the Legislation. In other words, the removal of judges on any of these grounds must be made by means of the proceeding prescribed, which is judicial in nature. The Constitution does not vest in the Congress the power to terminate the tenure of office of judges of the Court of First Instance or any other judge by removing them from office. It is high time that the Supreme Court should stop once and for all this injudicious encroachment of the Congress upon the judiciary, and to make the Congress realize that although the judiciary does not possess the force nor the will but merely judgment, and although it cannot dispense honors and hold the sword like the executive, nor command the purse like the legislative, yet it is not a subordinate of the executive or of the legislature, and that under the Philippine constitutional system, the legislative, the executive and judicial departments are all coordinate, co-equal and potentially co-extensive."

Article VIII, Section 10 of the Constitution of the Philippines provides that: "No law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Supreme Court." Unfortunately, the ousted judges were not able to secure the concurrence of two-thirds of all the members of the Supreme Court in declaring the law unconstitutional. Seven Justices voted for holding the law unconstitutional and four in favor

¹Chairman of the Committee on Judiciary of the Constitutional Convention.

of its constitutionality. One of the Justices considered such law as an attempt against the independence of the Judiciary, and made the following remark:

"Admittedly, section 7 Article VIII aims to preserve the independence of the judiciary. It assures that so long as they behave, they cannot be removed from office — no matter what party controls the Government — until they reach the age of seventy years or become incapacitated. To complete their independence from political control or pressure, it further assures them that their salaries cannot be diminished during their incumbency. [Sec. 9]. Hence it may be asked, of what consequence is the assurance of tenure of office and of salary non-diminution, if anyway judges could be legislated out through a court reorganization? . . . The Constitutional Convention wanted judges unafraid to lose their jobs or their salaries, unmoved and unsubdued by any considerations, except the trepidations of the judicial balance."

Another Justice², asserting that such kind of law tends to make the Judiciary subservient to the Legislature, said:

"We can have no independent Judiciary if judicial tenure may be shortened or destroyed, by legislative reorganization, however well intentioned and well meant. There is real and grave danger of the Judiciary eventually being subservient to a Legislature that thru abolition of judicial posts by means of a judicial reorganization can unmake judges. And how could a Judiciary, which under a constitutional form of government, is supposed to act as a check against the Legislature for any violation of the Constitution, do so when such Judiciary is subservient to the Legislature it is supposed to check?"

The second case is not less scandalous as the first one. It involved an executive violation of the same doctrine of separation of powers. A judge of the Court of First Instance of Iloilo was directed by the President, thru the Secretary of Justice, to serve in the Office of the President in Malacañang as adviser on legal matters, said judge having manifested that "he would serve in that capacity because the President wanted him to." Ex-Senator Francisco, asserting that such act of the President was unconstitutional, instituted a mandamus proceeding in the Supreme Court to compel said judge to discharge his functions as such, and that his assignment to serve as legal adviser in Malacañang, — a non-judicial function — be declared as violative of the Constitution. Contending that the act of the President was unconstitutional Atty. Francisco advanced the following argument before the Supreme Court: "The order of the President to the Secretary of Justice to relieve the respondent judge from his duties of performing the judicial act of administering justice in the court of which he was appointed and to detail him in Malacañang to perform non-judicial functions — to assist him on legal matters — is doubly unconstitutional, firstly, because the Constitution has not given him any power to give such order, and secondly, because such order violates the principle of separation of powers. The Constitution has invested the power of government in three distinct departments: the Legislative, Executive and the Judiciary, all of which are possessed of powers emanating alike from the people and limited and defined alike by the people; thus, all three departments are coordinate, coequal and co-important and of equal dignity. The detaching of a member of the Judiciary to a position under the executive department and in which he is responsible to the President for his official acts, would have

the effect of reducing the Judiciary to a position subordinate to that of the executive in violation of the principle of coequality and equal dignity of the two departments. The truth of this proposition is too plain to require elucidation. To say that such a practice is lawful and permissible would be to say that the executive may detail not only one but two, five, ten or any number of judges of first instance to his office. It is immaterial whether the President will do it. What is important is whether he can do it. If judges were to drop their duties at the bidding of the President or the Secretary of Justice in order to work in the executive department, the Courts of First Instance would be a mere appendage of the executive, to be used as the President pleases. Thereby, the Executive would have it in his power to destroy the integrity and effectiveness of the Judiciary, cripple it and render it useless whenever he pleases.

In a democracy such as ours, no trust more sacred and vital could be reposed by the sovereign in any one than that of exercising judicial powers. In the carrying out of that trust, the judge, as a minister of justice, passes upon questions affecting the life, liberty and property of the citizens. In him is confided the solemn task, not only of enforcing and protecting personal and proprietary rights, but of safeguarding the people from tyranny and oppression and preserving their freedom and inalienable constitutional rights. He is part and parcel of the judiciary, which is venerated as the bulwark of justice and freedom. Upon accepting that trust and taking the oath that with the help of God he will well and faithfully discharge the same to the best of his ability, respondent should have felt himself consecrated thereto and proceeded to perform the same with utmost devotion and dedication. He should not have subserviently obeyed the order of the President to serve in Malacañang as it is offensive to the Constitution which he as judge and the President as such have solemnly sworn to support and defend."

Unfortunately, the decision of the Supreme Court was not made known to the people because before its promulgation, of the decision which would reportedly have adversely affected him the said judge concerned manifested to the Court that he was appointed technical adviser on legal matters to the President, that he accepted such office of legal adviser and abandoned and renounced his office as judge of the Court of First Instance, and, therefore, the case for mandamus against him had become a moot question and must be dismissed. And the Supreme Court resolved to dismiss the case, as it became a moot one with the resignation of the judge.

Paradoxical as it may sound, in the case of judges, the bill which was converted into law ousting them from the Judiciary, was filed by a former delegate to the constitutional convention, one of the justices who voted in favor of the constitutionality of the law was also a former delegate and three of the victims of such law were likewise former delegates to the convention.

Timely, therefore, is the following warning of Senator Recto:

"Neither in the toils of the day nor in the vigils of the night can the sentinels of the Constitution relax their vigilance. Let us all be wary and stand by our arms, lest, by culpable tolerance or by criminal negligence, our country should in some forbidding future become a desolate Carthage wherein only the naked ruins of our republic shall remain, fallen monuments of the past in whose debris our descendants, by then the forlorn bondsmen of some corrupt despot, shall in vain endeavor to decipher the language of the Constitution, inscribed, as in forgotten hieroglyphs on the sarcophagus of our dead freedoms."

¹Mr. Justice Cesar Bengzon.

²Mr. Justice Marcelino R. Montemayor.