SUPREME COURT OF THE PHILIPPINES

G.R. No. L-7910

FELICISIMO OCAMPO, DEMETRIO ENCARNACION, ROMAN CAMPOS, GAVINO S. ABAYA, ENRIQUE MAGLANOC, MAXIMO ABAÑO, ROMAN IBAÑEZ, LUIS N. DE LEON, ELADIO LEAÑO, and JOSE BONTON

versus

THE SECRETARY OF JUSTICE, THE SOLICITOR GENERAL, THE CHIEF ACCOUNTING OFFICER, AND JUDICIAL OFFICER, COURTS, FINANCE AND STATISTICS DIVISION, DEPARTMENT OF JUSTICE

Memorandum for Petitioners

(*Continued from September Issue*)

IF REPUBLIC ACT NO. 1186 REALLY ABOLISHES THE OFFICE OF THE PETITIONERS, THEN SECTION 53 OF SAID ACT IS UNCONSTITUTIONAL BECAUSE IT TERMINATES THE TERM OF JUDICIAL OFFICE IN VIOLATION OF SECTION 9 OF ARTICLE VIII OF THE CONSTITUTION.

"The power that creates can destroy."

The Solicitor General contends that *offices* created by the legislature may be abolished by the legislature because "the power that creates can destroy." Our answer to this argument is that it is precisely for this reason—that the legislature may abolish any office created by it—that the Constitution, having in mind that the main function of the courts and the reason for its existence is to administer justice—justice which is the greatest interest of man on earth—thought it wise not to place the court on the same footing as any other office created by the legislature which may be abolished any time at the pleasure of the legislature. To this end, and to prevent the abolition of courts for the evil purpose of simply shortening or terminating the office of the judge, the Constitution secures the tenure of office of the judges by providing that the members of the Supreme Court and 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.

A question primae impressionis.

The question as to whether the Legislature may abolish courts and thereby terminate the tenure of office of incumbent judges has not yet been decided by our Supreme Court. This is the first time that it has to decide this issue squarely, and no doubt its decision will go down in the history of our judicial institutions.

There is a case brought to the Supreme Court in 1915 in which the validity of Act No. 2347 reorganizing courts in the Philippines was raised. It was claimed that said Act was invalid because it abolished the Courts of First Instance created by Act No. 136 passed by the Philippine Commission in 1901, and removed the judges appointed under Act No. 136 to preside over the courts created thereby. Act No. 2347 provided in Section 7 thereof that the Judges of the Courts of First Instance, Judges-at-Large, and Judges of the Courts of Land Registration should vacate their positions on the date when said Act went into effect, and that the Governor-General, with the advice and consent of the Philippine Commission, should make new appointments of Judges of the Courts of First Instance and Auxiliary Judges in accordance with the provisions of said Act. One of the reasons advanced by the Supreme Court in holding the validity of said Act was that neither in Act No. 136 nor in the Constitution of the Philippines was there any provision which fixed the time during which the Judges of the Courts of First Instance of the Islands were entitled to hold such office. We quote:

> "Neither in Act No. 136, the law organizing the courts of justice in the Philippines Islands, nor in the Act of July 1, 1902, the constitutional law or Constitution of the Philippines, is there any provision which fixes or indicates the time during which the judges of the Courts of First Instance of the Islands are entitled to hold such office, the former Act merely stating in its section 48 that the judge appointed by the Philippine Commission shall hold office during its pleasure." (Conchada vs. Director of Prisons, 31 Phil. 94.)

Following the reasoning of this Supreme Court above quoted, we have it that if in the Philippine Bill, which was then the Constitu-

Memorandum for Respondents

(*Continued from September Issue*)

Incidentally, the long quotation (pp. 55-86, Francisco) is the *dissenting* opinion of Justice Snodgrass (p. 89, Francisco) in the above case of McCulley vs. State, *supra*. The majority opinion penned by Justice McAlister held —

> "x x x Construing these sections of the constitution, this court held: (1) That the legislature has the constitutional *power to abolish particular circuit and chancery courts*, and to require the papers and records therein to be transferred to other courts, and the pending causes to which they are transferred. The power to ordain and establish from time to time circuit and chancery courts includes *the power to abolish existing courts, and to increase and diminish the number*. (2) The judge's right to his full term and his full salary is not dependent alone upon his good conduct, but also upon the contingency that the legislature may for the public good, in ordaining and establishing the courts, from time to time consider his office unnecessary and abolish it. *The exercise of this power by the legislature is not such an interference with the independence of the judge or with his tenure of office as can be complained of.* When the court or courts over which a judge presides is abolished, the *office of the judge* is extinguished and his salary ceases. x x x" (53 S.W. 134, at p. 140)

The concurring opinion of Justice Wilkes held —

> "'x x x If the legislature had the power to enact the law, it must be either because the ordaining and *establishing of courts is a legitimate legislative power*, necessarily involving the *power to abolish* as well as to ordain and establish, and that the constitution has placed *no restriction upon the exercise of this power* inconsistent with the action of the legislature in the present case, or because the constitution, either expressly or by necessary implication, has vested in the legislature the power to ordain and establish courts, and that this power *carries with it the power of abolishing existing courts*. It is maintained by the attorney general and counsel for the state that the act in question is constitutional and valid on both of these grounds, while the counsel for the relators insist that the two courts abolished by the act were so guarded and protected by the constitution that, in the exercise of its power to ordain and establish courts, these two courts could not be abolished.' The court proceeds to discuss the questions involved in a manner at once exhaustive and able, and arrives at a conclusion that the *acts were valid and constitutional*. x x x" (53 S.W. at pp. 145-146.)

The quotation on pp. 22-23 in Atty. Francisco's Memo as "answer of the Solicitor General" is an immaterial citation from the Answer in the Zandueta case, and is not quoted from the answer of the undersigned Solicitor General in this case.

Counsel for petitioners claim that Republic Act No. 1186 only abolished the classification of the judges not their office (p. 26, Francisco). Our answer is best expressed in the explicit provision of Section 3, Republic Act No. 1186 which *abolished* the positions or offices of Judges-at-Large and Cadastral Judges and *repealed* Section 53 of Republic Act No. 296. The district judges were not covered by said Republic Act No. 1186.

Petitioners were not removed from their offices —

Counsel for petitioners claim that the effect of Republic Act No. 1186 is to remove the petitioners Judges-at-Large and Cadastral Judges from office and repeatedly used the term "to legis-

tion of the Philippines, there had been a provision securing the tenure of the office of the judges as in our present Constitution, the Supreme Court would not have upheld the validity of the Act in question which in reorganizing the Courts of First Instance in the Philippines vacated the office of the incumbent judges.

The phrase "may from time to time" in the American Constitution not incorporated in the Philippine Constitution.

The Constitution of the United States provides:

> "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may *from time to time* ordain and establish. The judges, both of the supreme and inferior courts, shall hold their office during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office." (Sec. 1, Art. III.)

Our Constitution, which was patterned after the American Constitution, provides the following:

> "The judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law." (Sec. 1, Art. VIII.)
>
> "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. They shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office." (Sec. 9, *Ibid.*)

Comparing the provision of our Constitution above quoted with that of the American Constitution, it will be noticed that while the American Constitution gives the Congress the power to establish inferior courts *from time to time*, such is not however the power that our Constitution grants our Congress. Why did not our Constitution say; "such inferior courts as may *from time to time* be established by law"? May it not be because the sole intention of the Constitution was merely to create a judiciary in the Philippines under the system of government established by the Constitution in lieu of that which existed under the Commonwealth Act; a judiciary that could be said to breathe life from the Constitution itself instead of from prior organic laws? If the intention of the Constitution was that after the judicial system in the Philippines has been created by the Constitution and the Congress,— the Congress by creating the inferior courts—the Congress shall still have the power to establish from time to time inferior courts —would not the Constitution have inserted the phrase from time to time in the provision granting the Congress the power to establish inferior courts, as the American Constitution does?

Be that as it may, we contend that the power of the Congress to abolish courts, if at all, it may be implied from its power to establish them, must necessarily recognize limitations or restrictions.

Different schools of thought.

The American courts are divided on the question of whether the legislature may abolish a court and terminate the tenure of office of the judge of such court. Some American courts hold that the legislature may abolish a court because it has the power to create the same; that such power to abolish a court may be exercised without any restriction at all; and that when a court is abolished any unexpired term of the judge of such court is abolished also. Among the American decisions maintaining such theory is the Cherokee County v. Savage (32 So. 2d. 803; see *Lawyers Journal* of July 31, 1954, p. 360).

The other theory is that although the legislature may abolish a court because it has the power to create the same, it cannot however abolish a court when its effect is to terminate the tenure of the office of the judge of such court, because the tenure of office of the incumbent judge is protected by the Constitution.

late them out" (p. 40, Francisco), by legislating out judges (p. 15, Sebastian); Government's view would legislate them out of office (p. 70, Salazar), to remove "members of the Judiciary by legislative action" (p. 42, Francisco). Our answer is that there is no such removal, because the offices or positions of Judges-at-Large and Cadastral Judges were abolished. In the case of Manalang vs. Quitoriano, 50 O.G. 2515 (p. 18 of Respondents' Answer), petitioners assailed as illegal the designation of respondent as Acting Commissioner of the service as "equivalent to removal of the petitioner from office without just cause." This Honorable Court held that —

> "This pretense can not be sustained. To begin with, petitioner has never been Commissioner of the National Employment Service and, hence, he could not have been, and has not been, removed therefrom. Secondly, *to remove an officer is to oust him from office before the expiration of his term.* A removal implies that the office exists after the ouster. Such is not the case of petitioner herein, for Republic Act No. 761 *expressly abolished* the Placement Bureau, and, by implication, the office of director thereof, which, obviously, cannot exist without said Bureau. *By the abolition* of the latter and of said office, *the right thereto of its incumbent*, petitioner herein, *was necessarily extinguished thereby.* Accordingly, the constitutional mandate to the effect that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law' (Art. XII, Sec. 4, Phil. Const.), is not in point, for there has been *neither a removal* nor a suspension of petitioner Manalang, but an *abolition* of his former office of Director of the Placement Bureau, which, admittedly, is *within the power of Congress to undertake by legislation.*" (pp. 2517-2518, underscoring supplied.)

The power of Congress to abolish statutory courts —

Under the second proposition in the memorandum of Atty. Francisco, he mentions three schools of thought (p. 52, Francisco), namely:

1. Theory of absolute and unrestricted power of the Legislature to abolish courts, (p. 54, Francisco);
2. The Legislature may abolish courts provided it is not motivated by bad faith, (p. 86, Francisco); and
3. The Legislature does not have the power to abolish courts when the intent is to terminate office of the incumbent judges. (p. 86, Francisco)

Counsel for petitioners argue that the established independence of the Judiciary and the tenure of office is "a limitation upon the power of the Legislature to abolish courts" (p. 88, Francisco). Our position is that the power of Congress to abolish inferior courts is expressly granted by Article VIII, Section 1 of the Constitution, which reads:

> "ARTICLE VIII, SECTION 1.— The Judicial Power shall be vested in one Supreme Court and in *such inferior courts as may be established by law.*"

While the Constitution equally provides for the judicial tenure of office under Article VIII, Section 9, such tenure only lasts "during their continuance in office and their compensation as may be fixed by law" (pp. 38-40, Respondents' Answer). The statement that the power of Congress over statutory courts is "a *general* legislative power and must be considered as circumscribed by the *specific* constitutional limitation" that a judge has definite tenure (p. 4, Sebastian) cannot be legally correct, because both provisions proclaim basic fundamental principles, which must be harmonized. The correct theory was enunciated by Justice Laurel in his concurring opinion in the case of Zandueta vs. De la Costa, 66 Phil. 615.

> "x x x I have a very serious doubt as to whether the petitioner, — on the hypothesis that the question involved is his security of tenure under the Constitution — could by acquiescence or consent be precluded from raising a question of pub-

Among the decisions holding such theory is Commonwealth v. Gamble (62 Pa. 343; see *Lawyers Journal, ibid.*) There is an intermediate theory, which holds that the office of the judge may be abolished by the abolition of the court provided "the office was abolished in good faith. If immediately after the office is abolished another office is created with substantially the same duties and a different individual is appointed, or if it otherwise appears that the office was abolished for personal or political reasons, the courts will interfere." (Garvey v. Lowell, 199 Mass. 47, 85 N.E. 182, 127 A.S.R. 468; State v. Eduards, 40 Mont. 287, 106 Pac. 695, 19 R.C.L. 236). Such doctrine is quoted in the decision of the Supreme Court in the case of Brillo vs. Enage, G.R. No. L-7115, March 30, 1954. That same doctrine is alluded to in the answer of the Solicitor General which we quote:

"* * * As the new court differs in its organization and jurisdiction from the old, we have no power to say that the abolition of the court was a scheme to turn this man out of office * * *. The act in question is therefore valid." (*Wenzler vs. People*, 58 *N. Y.* 516.)

The same doctrine has been applied in the following case:

"Appellant contends that the act of 1935 (House Bill No. 91) is unconstitutional as colorable legislation, passed to displace him as county judge or chairman. Inasmuch as he was not county judge at the time of the passage of this act, that feature of the attack on it may be dismissed. The office of county chairman was expressly abolished by said act. The act creating that office was repealed. The office of county judge was created. If the form and structure of the governmental agency created by the act were substantially different from that of chairman, then said act is valid. At least two changes are made which go to the organic constitution of the office of county judge: (1) The term of office is changed from one year to eight years, and (2) the county judge is to be elected by the people instead of by the quarterly county court. The second of these is clearly fundamental. Haggard v. Gallien, 157 Tenn, 269, 3 S. W. (2d) 364; Holland v. Parker, 159 Tenn. 306, 17 S. W. (2d) 926.

"The changes made being material and fundamental, it follows that the act is not open to the objection that it is colorable legislation adopted to displace appellant as chairman. Courts, in determining the validity of a statute, cannot inquire into the conduct and motives attributable to members of the General Assembly. Peay v. Nolan, 157 Tenn. 222, 7 S. W. (2d) 810, 60 A. L. R. 408; State v. Lindsay, 103 Tenn. 625, 53 S. W. 950. [Joseph A. Caldwell, Appt., v. W. D. Lyon et al., 168 Tenn. 607, 80 S. W. (2d) 80.]"

Which of these three theories must be adhered to for the benefit of our Republic, which, being young, will likely have to suffer most of the time the onset of political tempests? With due respect to the wisdom and statesmanship of the members of the highest court of the land, we beg to state that it is the second theory that should be followed. This theory is more in consonance with reason and tends to protect—not to destroy—the independence of the judiciary, which is justly regarded in a great measure as the "citadel of the public justice and the public security", in the words of Alexander Hamilton.

The theory of absolute and unrestricted power of the legislature to abolish courts.

We believe that this theory is unsound because it destroys the independence of the judiciary and the legislature may abuse such power without redress. The arguments of Chief Justice Snodgrass in the case of McCulley v. State, 53 S. W. 134, which have been condensed hereunder*, constitute the best refutation to such theory—

"We come to the question and proceed to its consideration with the elaboration it deserves, for the question is one of the most important that ever arose for final decision in this state and upon

* In the original memorandum these arguments were transcribed **verbatim.**

lic interest. *Security of tenure is certainly not a personal privilege of any particular judge.* x x x"

"The petitioner in his vigorous and impassioned plea asks us to vindicate the *independence of the judiciary* and uphold the constitutional mandate relative to the *security of tenure of judges*, embodied in section 9 of Article VIII of the Constitution. He claims that 'Commonwealth Act No. 145 is unconstitutional because the regrouping of the provinces into nine judicial districts as therein provided for was effected by the National Assembly without constitutional authority.' Upon the other hand, the Solicitor-General directs our attention to the *power of the legislature over courts inferior* to the Supreme Court, conferred by section 1 of Article VIII of the Constitution. I think the constitutional issue thus squarely presented should be met courageously by the court, x x x." (p. 625.)

"x x x Section 2, Article VIII of the Constitution vests in the National Assembly the power to define, prescribe and apportion the jurisdiction of the various courts, subject to certain limitations in the case of the Supreme Court. It is admitted that section 9 of the same article of the Constitution provides for the security of tenure of all the judges. The principles embodied in these two sections of the same article of the Constitution *must be coordinated and harmonized*. A mere enunciation of a principle will not decide actual cases and controversies of every sort." (Justice Holmes in Lochner vs. New York, 198 U.S., 45; Law. ed., 937.)

"I am not insensible to the argument that the National Assembly may abuse its power and move deliberately to defeat the constitutional provision guaranteeing security of tenure to all judges. But, is this the case? One need not share the view of Story, Miller and Tucker on the one hand, or the opinion of Cooley, Watson and Baldwin on the other, to realize that the application of a legal or constitutional principle is necessarily factual and circumstantial and that fixity of principle is the rigidity of the dead and the unprogressive. I do say, and emphatically, however, that cases may arise where the violation of the constitutional provision regarding security of judicial tenure is palpable and plain, and that legislative power of reorganization may be sought to *cloak an unconstitutional and evil purpose*. When a case of that kind arises, it will be the time to make the hammer fall and heavily. But not untill then. I am satisfied that, as to the particular point here discussed, the purpose was the fulfillment of what was considered a great public need by the legislative department and that Commonwealth Act No. 145 was *not enacted purposely to affect adversely the tenure of judges or of any particular judge*. Under these circumstances, I am for *sustaining the power of the legislative department* under the Constitution. x x x" (pp. 626-627.)

Unless the legislative power of abolishing statutory courts is exercised "to cloak an unconstitutional and evil purpose," or more specifically "to affect adversely the tenure of judges or of any particular judge," the power to legislate on inferior courts must be sustained. In fact, the tenure of judicial office must yield to the power of Congress to alter or abolish inferior courts.

"A constitutional provision that judges of a certain court shall hold their offices for five years *must yield to another provision that the legislature may alter or abolish the court*, and therefore the legislature may reduce the number of judges by fixing an end to the terms of certain of them although within five years after they took office." (Quoted on p. 37 of Respondents' Answer.)

"x x x If the framers of the Constitution intended to leave it to the legislature to establish and *abolish courts* as the public necessities demanded, this *was not qualified or limited by the clause as to the judge's term of office*. To so hold would be to allow the clause as to the length of the judge's term to overthrow the other clause, whereas we construe the provision that the judge's term shall be eight years to be upon the *assumption*

its determination hangs not only the independence but the existence of the judicial department of the state government. x x x Our government, state and national, is divided into three distinct and independent departments — legislative, executive and judicial. x x x Our constitution, after providing that 'all power is inherent in the people' proceeded to declare how the people would have it exercised, to distribute into departments and to vest in it such as the people wished each to exercise and to put upon each the limitation which was deemed essential to confine it within the scope of the authority the people vested and beyond which they intend to restrain. x x x While, it is sometimes said that the legislature is omnipotent and its authority unlimited except when restrained by the Federal or state constitution, this is only sub modo true generally in the cases in which it has been uttered but it is wholly inaccurate when given the general application to which its formulation would lead. All that is meant by it is that the legislatures of states of the Union, as legislative representatives of the people, have all legislative power, not expressly or by necessary implication limited. *Smith v. Normant*, 5 *Yerg*. 272, 273. x x x

"In 1875 it was held that, though true in theory that circuit courts and chancery courts must be maintained, it was not so in fact, — the legislature could abolish any it chose. State ex rel. Coleman v. Campbell, 3 Tenn. Cas. 355. Of course, if it could abolish any, it could abolish all, as it was not and is not pretended that any one or more of them enjoyed a special immunity from legislative control. This case was based upon the theory that the power to establish involved necessarily the power to abolish, — a theory wholly inconsistent with the constitutional provision for the establishment and continuance of the circuit and chancery court system; for, if one or both is 'established,' it can and 'shall' exist or have jurisdiction vested in it under the constitution, and thus be kept alive and preserved against legislative power, as a part of the court system, as a constitutional court; but, if the power to establish includes the power to destroy, such cannot be the result, and there is no protection to either circuit or chancery court system thus recognized and attempted to be preserved and protected by the constitution.

"That the conclusion of the court in the afore-cited case of State ex rel. Coleman v. Campbell, 3 Tenn. Cas. 355, is so incorrect, not to say transparently erroneous, as to be perfectly demonstrable, appears from the simplest statement. If the legislature must preserve circuit and chancery courts, and yet may abolish them; if it is true also, as it constitutionally is, that it may also establish other inferior courts, and vest in them such jurisdiction as it chooses, — why could it not abolish all circuit and chancery courts, and then establish other inferior courts in whom it might vest all inferior jurisdiction? Who would say, and what but the constitution could say, how many, if any, circuit courts or how many chancery courts, if any, it should preserve? It is so clear that the power to establish does not include, as against this preservative provision of the constitution, the power to destroy any or all of them, that it is wonderful to us that the contrary view could have ever prevailed for a moment. To say nothing of the provisions which make constitutionally the term of all the judges of all these courts eight years, and prevent changing their salaries during the the time for which they were elected, it seems so manifest that the power to destroy one or all those courts when created, is against the preservative clause of the constitution respecting the circuit and chancery courts, as only need suggestion to demonstrate its nonexistence. If the legislature can abolish one, it can abolish all. Which shall it re-establish, and how can it be required to re-establish, any one of them, if so, which, especially in view of its power to establish other inferior courts and vest them with any jurisdiction it pleases? It is a vain thing to say it can abolish as it pleases, but must retain or recreate the same tribunals. The concession of the power to abolish one, coupled with the declaration of constitutional necessity for the retention of the system, which the court holds in that case must be done, is a patent impracticability, not to say absurdity.

that the court continues to exist; x x x" (McCulley vs. State, 53 S.W. 134.)

The contention of petitioners is predicated mainly in the case of Commonwealth vs. Gamble, 62 Pa. 343 (p. 102, Francisco; p. 61, Salazar). But the act involved in said case was to "deprive a *singled judge only* of his office."

> *"The act displaces Judge Gamble as the presiding judge, and appoints Judge White and his law associate to hold the courts therein.* If such a thing can be done in one district, it may be done in all, and thus, not only would the independence of the judiciary be destroyed, but the judiciary, as a co-ordinate branch of the government, be essentially annihilated." (See Lawyers' Journal of July, 1954, p. 363.)

Admittedly, Republic Act No. 1186 was not enacted to single out any particular judge or particular judges. It applied to *all* positions of Judges-at-large and Cadastral Judges. If the ten petitioners had been appointed as District Judges like the other 23 Judges-at-large and Cadastral Judges, whose positions had been abolished, they would not have complained against Republic Act No. 1186. In fact, this case would never have been filed. But petitioners were not appointed by the President in the exercise of his sole prerogative of executive appointment. Hence, the complaint of the petitioners should be directed not so much against *Congress* in abolishing the positions of Judges-at-large and Cadastral Judges, but more so, and in particular, against the Chief Executive in not having appointed them as District Judges. (p. 20, Respondents' Answer)

Moreover, the case of Commonwealth vs. Gamble, *supra*, which is inapplicable to the instant case, because it *singled out a judge*, was not followed in the case of Aikman vs. Edwards, 30 L.R.A. 149, 42 Pac. 366, wherein the Supreme Court of Kansas discussed the decision of Commonwealth vs. Gamble, and held that—

> "x x x It is contended that the judicial department is co-ordinate with and independent of the legislative, and that, if the right of the legislature to *destroy* a judicial district, and thereby legislate a judge out of office, is recognized, the *independence of the judiciary* is destroyed, and the legislative will become dominant over the judicial department of the government. In support of this contention it must be conceded that cases closely in point, decided by eminent courts, are cited. *Among the strongest may be mentioned Com. v. Gamble*, 62 *Pa.* 343, 1 Am. Rep. 422; State v. Friedley, 135 Ind. 119, 21 L.R.A. 634; People v. Dubois, 23 Ill. 547; and State v. Messmore, 14 Wis. 177. We have carefully weighed and considered these authorities, and recognize their full force. While the reasoning of courts in these cases is applicable to the one now under consideration, we may remark that in each of the cases mentioned the court had under consideration *an act of legislature which would deprive a singled judge only of his office*, if valid. In this case the legislature had under consideration the *rearrangement* of the judicial districts covering a *large part of the state*. Notwithstanding our great respect for the tribunals by which these cases were decided, and the force of the reasoning by which their decisions are supported, we are *constrained to give a different construction* to the provisions of our own Constitution. The provisions in article 3 of that instrument, so far as they affect the matter under consideration, are as follows:
>
> "'Sec. 1. The judicial power of this state shall be vested in a supreme court, district courts, probate courts, justices of the peace, and such *other courts inferior* to the supreme court *as may be provided by law*. And all courts of record shall have a seal to be used in the authentication of all process'." (at p. 369)
>
> "x x x The question we now have to consider is whether this purpose has been accomplished without any violation of the constitutional restrictions. The argument on behalf of the plaintiff, and the reasoning of the courts in the authorities sustaining his contention, may, perhaps, be divided into two main pro-

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(Continued)

"The only argument for the preservation of the system is its constitutional establishment over and against the power of the legislature to abolish it, when established, during the existence of any term. It is not a question of trusting the legislature not to do it; it is a question of its power to do it, against the positive provision that these courts must exist by the preservative clause vesting in them the jurisdiction when created. No other conclusion meets this difficulty, and no argument has been made or could be made which obviates it. We would just as well say it must exist, but may not exist, as to assert the proposition, contended for, or put two and two together, and say they shall not make four, as to assert that the constitution preserves this system of courts against the power of the legislature, and then say it may destroy it by destroying the court severally or in toto. The principle herein contended for was conceded by the same court which decided the Coleman Case, and still that case was in part adhered to in State ex rel. Halsey v. Gaines, 2 Lea, 316, 319. In that case it was conceded (page 326) that an act abolishing a circuit with intent to destroy a judge would be void. This concession can mean nothing else than that an act destroying a judge by abolishing a circuit or division would be void, because it has been before and has repeatedly since been decided that the personal motive or intent of the legislature in passing an act cannot be inquired into, and, as the only intent which can be considered is the legal one determined by the effect of the act, if that effect is to destroy the judge the intent appears, and the act void. If this is not so, the concession is meaningless and misleading, not to say frivolous. For almost the same reasons are the other inferior judges protected from legislative interference. They are to be men of the same age, the same term of service, with the same unchangeable compensation, and elected by the same voters in the same district or circuit where they serve. Const. art. 6, § 4. To this conclusion this court came in the case of State v. Leonard, 86 Tenn. 485, 7 S. W. 453, and we used language there which we thought could by no possibility be misconstrued. In this connection we said: 'The constitution, in fixing the terms of the judges of inferior courts, elected by the people, at eight years, intended not only to make the judiciary independent, and thereby secure to the people the corresponding consequent advantages of courts free from interference and control, and removed from all necessity of being subservient to any power of the state, but intended also to prevent constant and frequent experimenting with court systems, than which nothing could be more injurious or vexatious to the public. It was intended, when the legislature established an inferior court, that it should exist such a length of time as would give opportunity for mature observation and appreciation of its benefits or disadvantages, and that the extent of its duration might discourage such changes as were not the result of most mature consideration. Realizing that a change, if made so as to constitute an inferior court, would fix that court in the system for eight years, a legislature would properly consider and maturely settle the question as to the propriety and desirability of such change or addition to our system; and conscious of the impropriety and the hazard of leaving the judicial department of the government at the mercy and whim of each recurring legislature itself elected but for two years, the framers of the constitution wisely guarded against these evils by the section referred to. Properly construed and enforced, it is effectual for that purpose. Disregarded or impaired by such interpretation as leaves it to exist in form without force or substance, and we have all the evils and confusion of insecure, changing, and dependent courts; frequent and constant experimenting with systems provided in haste, tried in doubt, and abolished before their merits or demerits are understood. It would be mortifying reflection that our organic lawmakers intended any such result in their avowed effort to make a government of three distinct and independent departments, and still more humiliating if we were driven to the conclusion that, while they did not intend it, they had been so weak and inapt in phraseology adopted as to have accomplished it. When a court whose judge is elected by the people of one or more counties in a district or circuit is

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(Continued)

positions: One, that it was the general purpose of the framers of the Constitution to protect the judicial department from legislative interference; the other, that they intended to insure to the judge a *tenure of office for the full term for which he was elected;* the one being necessary for the preservation of the *independence* and integrity of the judicial branch of the government in the administration of justice between litigants, and the other to preserve the individual right of the judge to his office. That the constitution intends to secure to the judiciary as an independent co-ordinate branch of the government is conceded on all hands, and that the district courts are an important part of the judicial system is beyond question. It is contended that, because the Constitution provides for district courts, and fixes the term of the judges, and *prescribes the mode of their removal from office,* their position is fixed, and is as safe from legislative interference as that of the justices of this court; that both are constitutional officers, in exactly the same sense, and to exactly the same extent. But it will be noticed that under the provisions of the Constitution above quoted the judicial power is vested, not merely in supreme and district courts, but in probate courts, justices of the peace, and such other courts, inferior to the supreme court, *as the legislature may see fit to create.* x x x" (at p. 368.)

"x x x The case of district judges and justices of the peace is different in this important particular: that the number of judicial districts and therefore the number of district judges, as well as the number of justices of the peace, *depend on legislative discretion.* x x x." (at p. 368)

"We think prior decisions of this court have construed our Constitution and announced the principles decisive of this case. In the case of *Devision of Howard County,* 15 Kan. 94, it was held that 'the *legislature has the power to abolish counties and county organizations* whenever it becomes necessary for them to do so in changing county lines or in creating new counties.' *Re Hinkle,* 31 Kan. 712, decides: 'The legislature has the power to abolish or destroy a municipal township, and when the *township is abolished or destroyed, the township officers must go with it.*' The doctrine of this case is reaffirmed in *Re Wood,* 34 Kan. 645. In the case of *State v. Hamilton,* 40 Kan. 323, it was said: 'There is no constitutional restriction upon the power of the legislature to *abolish* municipal and county organizations, and the *existence of the power is not disputed* and cannot be doubted.' x x x." (at p. 368)

"x x x To allow the legislature, while making one new district, *to legislate the judge of an old district out of office,* and provide for the appointment or election of two new judges, would clearly be vicious in the principle, and this is the class of legislation which falls within the constitutional inhibition. But to prohibit the legislature from *abolishing a district* which had been improvidently established, and thereby *vacate the office of a judge,* is another and altogether different thing, which the Constitution does not, in express terms, prohibit. While the independence and integrity of courts in the exercise of all the powers confided in them by the Constitution should be firmly maintained, jealousy of encroachments on judicial power *must not blind us to the just power of the legislature in determining within constitutional limits the number of courts required* by the public exigencies, and the *kind and extent* of the jurisdiction and functions to be discharged by each. We think the *legislature has the power to abolish as well as to create, to diminish as well as to increase, the number of judicial districts.* We might say, in this connection, that the plaintiff in this case does not claim any vested right in an office, and that no question is presented by the record before us as to the *right of the legislature to deprive a district judge of the compensation allowed him by law.* x x x (at p. 369)

"x x x The *great fallacy,* as we view the case, in the ar-

constituted by the legislature, and an election had, and the officer commissioned and qualified, it is not in the power of the legislature to take from him the term of eight years by devolving them intact upon another, or otherwise. If it can abolish in this way the office of county judge, it can abolish the office of any inferior judge, as all are protected, by the clause of the constitution referred to (article 5). For the honor of the framers of our constitution, the best interests of our people, the independence of the judiciary, and the security and order of our court system against rash and constant experiments of legislation, it affords us much satisfaction to give the constitution its plain, natural, and unobscure effect, to invalidate legislation of this character, and to be able to say that nothing as yet decided by our court stands as an obstacle in the way of our doing so. But, if there were, it would afford us pleasure to remove it.' State v. Leonard, 86 Tenn. 485, 7 S. W. 453. x x x Giving the constitution this construction harmonizes the entire section quoted, makes the judiciary department in fact, and not merely in fiction, independent, and harmonizes all the other cases before and since on this subject. See Smith v. Normant, 5 Yerg. 271; Pope v. Phifer, 3 Heisk. 682; State v. McKee, 8 Lea, 24; Cross v. Mercer, 16 Lea, 486; State v. Maloeny, 92 Tenn. 68, 20 S. W. 419; State v. Cummins, 99 Tenn. 674, 42 S. W. 880.

"It should be noted here that all the cases in this court have gone upon the theory, generally recognized in the American courts, that when the legislature makes or creates an office without a tenure, or independently of constitutional provision, it can abolish it or change its tenure or its compensation at pleasure, but that when it creates a constitutional office (that is, one directed or authorized under the constitution or recognized by it, and for which the constitution has provided a tenure) the legislature can not abolish the office, abridge its term, or destroy its substantial functions or emoluments. 12 Am. & Eng. Enc. Law, pp. 18, 19. x x x

"Nothing is better settled in this state at this time than this proposition. It is equally settled that the legislature may, as in the sheriff's case we held (State v. Cummins), diminish or increase the duties; and in the case of circuit, chancery, and other established inferior courts, it may diminish or increase the jurisdiction, enlarge or contract the territory of their work, but it cannot destroy either the officer or the office in toto. And it cannot, therefore, abolish a circuit or chancery division, because that would destroy the judge. The line must be drawn somewhere. We undertook to draw it in the Cummins Case. x x x There must be a line — a reasonable line — drawn somewhere, which permitted the law to regulate the office, but recognized and continued its constitutional existence. We drew the only one possible. It applies in the same way to the judges. The constitution is ever more specific as to them, for it directs the vesting of jurisdiction, and requires a fixed territory for service and an unchangeable compensation. The rule is the same, — must necessarily be the same. Legislation may increase or diminish the jurisdiction of constitutional judges. It may add territory or take it away, but it cannot take all jurisdiction of constitutional judges. It may add territory or take it away, but it cannot take all jurisdiction or all territory away. Enough must be left to preserve the substantial jurisdiction and functions of the office. Nothing less than this is reasonable to the law. Nothing more is agreeable to the constitution. To show how clear this is from another standpoint, we consider what appears in the constitution as to the supreme court, and our construction of it. The constitution says our jurisdiction shall be appellate only, 'under such restrictions and regulations as may be from time to time prescribed by law.' Article 6, § 2. Under this clause we have recognized the right of the legislature to take from us and confer on other courts (notably the court of chancery appeals) certain jurisdiction. But we did not mean — the constitution could not mean—that the legislature could take it all away. If so, there need be no supreme court. Here, too, the line must be drawn. We must have jurisdiction. The legislature may reasonably limit. It cannot, therefore, des-

gument in favor of the plaintiff, and in the cases cited by him, *is that the rights of the particular individual who chances to be elected judge are looked upon as paramount and superior to the rights of the public.* The *correct view* is that a public officer, no matter what the department of the government in which he serves is a *public servant.* A district judge is provided to aid in the administration of the laws. While it is right that the public should deal justly with him, *his individual rights are by no means of primary importance.* x x x." (at p. 369 (Underlining supplied.)

The debates during the Constitutional Convention on the Judiciary will reveal the reason for the judicial tenure as prohibiting the Constitution to *single out* judges—

"x x x MR. JOVEN. Granting that there is a provision *insuring fixed tenure of office,* and granting also that there is a provision in the Constitution assuring that once appointed the justice of the court, will at least have a fixed compensation which cannot be reduced by the Legislature, but by leaving the *creation or the existence of the court* of appeals in the hands of the Legislature, suppose the National Legislature will abolish the courts of appeals because it is at its mercy.

"Will not the abolition of the court of appeals have the effect of nullifying those provisions regarding fixed tenure of office and fixed compensation? *If the office does not exist, naturally that is one means of getting rid of the incumbent,* and *will not that fact affect the independence of the judiciary,* affecting the administration of justice?

"MR. LAUREL. I desire to invite the attention of the gentleman from Ilocos Sur to the very able dissertation of Alexander Hamilton in a series of articles, especially No. 86, on the Federal Judiciary, in regard to the extent and limitation of that provision with regard to the good behavior of justices and judges. In the first place, I will commence by saying that if the argument is that we should insert a court of appeals in this constitution in order to tie up the hands of the National Assembly, well, there is no reason why if you want to carry your argument to its logical conclusion, why include only the court of appeals and not include the courts of first instance and other inferior courts?

"As regards the other point raised by the gentleman from Ilocos Sur which brings rather a very delicate question, I do not want to be quoted as author for this, but simply to the extent of quoting the statement of Mr. Alexander Hamilton in regard to the provisions as to the *tenure of office of judges* during good behavior. The purpose, according to him, of inserting that provision in the Federal Constitution of the United States *is not to tie up entirely the hands of Congress or the Assembly in our case,* from trying to reorganize the judicial system in case of emergency or in case of a sudden necessity. The purpose of this provision is not to permit the Executive or anybody under the Federal Government *to single out judges* who are *persona non grata* to him because he is in power, and give rise to the retention of those who are probably not as capable as those who are *being singled out.* That is the point in the dissertation of Alexander Hamilton, so that the point of doubt raised by Your Honor would not happen to a situation where in case of an economic collapse or an economic bankruptcy, the Federal Government may not take the necessary measures. I would even go further by saying that under the police power of the State which is not stated in the Constitution but which is inherent in every sovereignty, the Government of the Philippines that we shall establish may adopt the necessary measures calculated to safeguard the supreme and paramount interest of the people and the nation, with or without the Constitution as an inherent attribute of sovereignty." (Debates on the Judiciary in the Constitutional Convention, Lawyers' League Journal, Vol. III, No. 10, pp. 558-559; underlining supplied.)

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troy. If so, it can destroy this court. The Cummins Case declares the sound principle on which all constitutional offices must be sustained, and upon it the courts with all others. x x x See cases cited in reference to 12 Am. & Eng. Enc. Law, pp. 18, 19 from many states; and see, especially, Com. v. Gamble (Pa.) 1 Am. Rep. 422; Reid v. Smoulter, 128 Pa. St. 324, 18 Atl. 445, L.R.A. 517; Fant. v. Gibbs, 54 Miss. 396; State v. Friedley (Ind. Sup.) 34 N.E. 872, 21 L.R.A. 634; Foster v. Hones, 52 Am. Rep. 638; People v. Dubois. 23 Ill. 498; Attorney General v. Jochim (Mich.) 58 N.W. 611, 23 L.R.A. 703; State v. Messmore, 14 Wis. 177; Ex parte Meredith (Va.) 36 Am. Rep. 778; Hoke v. Henderson, 25 Am. Dec. 677; King v. Hunter (N. C.) 6 Am. Rep. 754; State v. Douglass (Wil.) 7 Am. Rep. 89 and note; 7 Lawson, Rights, Rem. & Prac. 3817, note; Throop, Pub. Off. § 19, 20.

"As supposed to the contrary of this great weight of authority, four cases are cited. They are Aikman v. Edwards (Kan. Sup.) 42 Pac. 366; Crozier v. Lyons, 72 Iowa, 401, 34 N. W. 186; Board v. Mattox, 30 Ark. 566; Hoke v. Henderson, 25 Am. Dec. 677.

"In the case of Aikman v. Edwards (Kan. Sup.) 42 Pac. 366, the question as to the power of the legislature to interfere with a judicial tenure of office was not involved. x x x The sole question before the court was whether the legislature, by statute, had the power under the constitution to abolish a judicial circuit by transferring the counties composing it to another circuit. The act in question abolished four districts by transferring their jurisdiction to other districts. As is shown in the opinion of the court, this was done upon economical grounds, and to dispense with extravagant and useless courts. The fact that under these circumstances the legislature reserved to the judges of the abolished courts their salaries for their full terms of office furnishes the evidence that the legislature considered that this act would be unconstitutional unless such reservation was made. The constitution referred to in this case provided that judges should hold their offices for a term of four years. x x x

"The case of Crozier v. Lyons, 72 Iowa, 401, 34 N. W. 186, has no bearing upon the question in the case at bar. The constitution of Iowa (1857) provided that the judicial power should be vested in a supreme court, district court, and such other courts inferior to the supreme court as the general assembly may from time to time establish. It further provided for a fixed term of office as to the judges of the supreme court and district court, and for an undiminished compensation during the term for which they were elected. It further provided for the reorganization by the legislature of judicial districts, and an increase of judges of the supreme court, but that this should be done so as not to remove a judge of said court from office. As to inferior courts which were not embraced in the classes of courts before named, said constitution contained no provision for a fixed tenure of office, nor for an undiminished compensation during continuance in office, nor any prohibition against removal from office. In law, the prohibition in said constitution against removal from office of one class, the judges conferred the implied power to remove the other class, the judges of the inferior courts constituting said class. It will be seen from said constitution that the class of courts designated in the same as 'inferior courts' were intended to be creatures of the legislature, subject to its will, and for this reason no constitutional limitations were thrown around such courts. It is obvious from the terms of said constitution that no question of the legislative intereference with a constitutional tenure of office arose in said case. 7 Hough, Am. Const. (Iowa Const.) p. 382, art. 5.

"The case of Board v. Mattox, 30 Ark. 566, was grounded upon express provisions of the Arkansas constitution, and is not in point x x x." In this case an inferior court was abolished by an act of the legislature, and the judge of the court instituted a mandamus proceeding to compel the payment of his salary. The court, holding adversely to the contention, said: "Where the court is abolished, as was the case in this instance, there was no longer an office to fill, no officer, no service to render, and no fees due." It

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Hypothetical law reducing membership of the Supreme Court would not apply to the case at bar —

Counsel for petitioners apparently followed the remarks of Prof. Aruego during the last minutes of the oral argument held on August 10, 1954, when he expressed the opinion that a law reducing the membership of the number of this Honorable Court from 11 to 7 would be constitutional under Art. VIII, section 4, which provides:

> "SEC. 4. The Supreme Court shall be composed of a Chief Justice and ten Associate Justices and may sit either in banc or in two divisions unless otherwise provided by law;"

but unconstitutional under Art. VIII, Section 9 of the Constitution which provides for judicial tenure of office. Such statement directed at this Hon. Supreme Court partakes of an "*ad hominem*" argument. And we do not believe that a law can be both constitutional and unconstitutional at the same time. Counsel for petitioners following the same argument submit that a law reducing the number of this Honorable Supreme Court from 11 to 7 by eliminating the four youngest members in point of service or the four oldest members (p. 9, Sebastian), or if Congress should increase the membership of the Supreme Court to 15 and after the 4 additional justices are commissioned, the number is again reduced to 11 (p. 70, Salazar), the reduction would be unconstitutional as violative of judicial tenure of office. We may agree to the conclusion that such a law reducing the membership of this Honorable Supreme Court from 11 to 7 by eliminating the 4 oldest or the 4 youngest members would be unconstitutional, but the reason would be that such a hypothetical act would *single out* 4 definite justices of this Honorable Court, and in the words of Justice Laurel, such a law would be "enacted purposely to affect adversely the tenure" of justices or of particular justices (or judges) and thereby "cloak an unconstitutional and evil purpose" (Zandueta vs. de la Costa, 66 Phil. 615, at p. 627).

Prof. Aruego drawing a parallel to the instant law, Rep. Act No. 1186 which abolished the positions of judges-at-large and cadastral judges, expressed his opinion that such a law would be constitutional because Congress has the power to organize, abolish and reduce statutory courts, but unconstitutional insofar as it would deprive the petitioners of their tenure of office. We disagree with the opinion of Prof. Aruego as to the invalidity of Rep. Act No. 1186, because the law does not single out any specific or particular judges. Rather, it abolished all the existing positions or offices of judges-at-large and cadastral judges. The law is general. It was not enacted to affect adversely the tenure of any particular judge. It was not a cloak to cover an unconstitutional or evil purpose.

Such an hypothetical law if applicable to the Supreme Court and intended to deprive the four oldest or four youngest members of this Honorable Tribunal of their judicial tenure of office would be invalid under the principle enunciated in the case of Commonwealth vs. Gamble, 62 Pa. 343. However, Republic Act No. 1186 abolishing all the positions of judges-at-large and cadastral judges is valid and constitutional under the principles enunciated in the cases of Cherokee County vs. Savage, 32 S. ed. 803; McCulley vs. State, 53 S. W. 134; Aikman vs. Edwards, 42 Pac. 366, and the other Philippine decisions cited in the Answer of respondents (pp. 9-19), and restated in this Reply Memorandum (pp. 5-9) re: authorities upholding the abolition of judgship.

Alleged purpose to legislate petitioners out of office —

In our Answer (pp. 24-27), we cited authorities to the effect—

> "Courts will not institute any inquiry into the motives of the legislative department" (Downy vs. State, p. 24 of Answer);
>
> "With the motives that dictated the Legislatures in either case the courts are not concerned." (People vs. Luce, p. 24 of Answer);

will be seen that said constitution (that of Arkansas) expressly conferred upon the legislature the power to abolish inferior courts. The constitutional limitation upon the legislature, that it should not interfere with the term of office of a judge, is to be construed in connection with the provision conferring the power to abolish. This limitation was construed by the court, that while the office existed, only during this time the term of office should not be interfered with. It is therefore evident that the court based its conclusion upon the theory that said limitation did not control the provision conferring the express power to abolish, and that the limitation was subordinate to this provision. So, therefore, the case is grounded on an express constitutional provision conferring upon the legislature the power of abolition; that power of abolition necessarily carrying with it the power of deprivation of office.

The case of Hoke v. Henderson, 25 Am. Dec. 677, involved the tenure of office of a clerk, — an office recognized by the constitution of the state, but as to which there was no tenure of office prescribed in that instrument, such tenure being left to the will of the legislature. In other words, the ruling in this case is applicable only to offices which are subject to legislative will, and not to offices the tenures of which are constitutionally defined. The case itself expressly declares that the legislature is powerless to interfere with officers the tenure of which is constitutionally prescribed.

"Having shown that the two Tennessee cases (out of line with former and subsequent cases on the same principle) directly against the holding in Pope v. Phifer, 3 Heisk, 682, repudiated by three cases since, precisely in point (State v. Ridley, State v. Leonard, State v. Cummins), never should have been controlling I wish to present the original question against the merit of these opinions, per se, and in this connection I would refer first to their inherent want of weight by reason of the fallacious doctrine upon which they are rested. It is, first the assumption that 'whatever the legislature could establish it could destroy.' The authorities already cited and quotations made wholly overturn this assumption. It is clear that when a thing is established by the legislature, and exists only by virtue of that authority, the authority may be withdrawn and the thing itself destroyed. It is equally clear in reason, and we think we have demonstrated it to be so in authority, that when it is established by virtue of constitutional direction, and to exist and take power and duration, with unchangeable salary, from the constitution, it is embedded in the constitution and beyond legislative control. x x x The second fallacy upon which it was based was the lack of independence of the judicial department. The republican form of government which we in common with other states had adopted in theory embraced three independent departments, — the legislature, executive and judicial — each supreme in its own sphere and independent of the others. This theory had been assumed to be correct, and this condition of independence actually existing in fact, from the adoption of our earliest constitution."

The theory that the legislature may abolish courts provided it is not motivated by bad faith nor intended to turn the judges out of office.

This theory is less objectionable than the first one but is subject to the objection that it makes the intent of the legislature subject to inquiry on the part of the courts. The authorities are in conflict as to whether courts may inquire as to the motive and intent of the legislature in passing a law.

The theory that the legislature does not have the power to abolish courts when the intent or effect thereof is to terminate the office of the incumbent judges.

We now proceed to give the reasons why this theory is, among the three, the most sound and the most in consonance with the spirit of the Constitution.

"The discretion being conceded and the power admitted, the expediency of the legislative will, or the motives which may actuate that will in a given case, is not a fit or allowable subject of inquiry or investigation" (Bruce vs. Fox, p. 25 of Answer);

"Courts may not review questions of legislative policy" (p. 26 of Answer);

"The judiciary is not the respository of remedies for all political or social ills" (Vera vs. Avelino, p. 26 of Answer).

In the case of McCulley vs. State, 53 S.W. 134, the Court said—

"The exercise of this power by the Legislature is not such interference over the independence of the judge, or with his tenure of office, as can be properly complained of. The power may be possibly exercised without good cause, but in such case the courts can furnish no remedy." (at p. 136)

"An act cannot be annulled because it violates the best public policy, or does violence to some natural equity, or interferes with the inherent rights of a citizen, nor upon the idea that it is opposed to some spirit of the constitution not expressed in its words, nor because it is contrary to the genius of a free people; and hence the wisdom, policy, and desirability of such acts are matters addressed to the general assembly, and must rest upon the intelligence, patriotism, and wisdom of that body, and not upon the judgment of this court." (concurring opinion of J. Wilkes, at p. 144)

But counsel for petitioners insist that the purpose of Republic Act No. 1186 was "to weed out undesirable judges" (quoting Congressman Tolentino, p. 18, Sebastian). The statement of personal opinion by one Congressman is not the will of Congress. In fact Congressman Francisco who was the sponsor of the measure on the floor of Congress stated—

"MR. FRANCISCO. Mr. Speaker, the bill now under consideration is House Bill No. 1961 amending the Judiciary Act of 1948. The main feature of the measure is the *abolition* of the positions of cadastral judges and judges-at-large and the creation in lieu thereof of the position of auxiliary *district* judges."

"MR. FRANCISCO. The *purpose* of the law is clearly stated in the explanatory note. The *purpose of the law is twofold*: First, in order to remedy the backlog of cases, we propose to increase the number of judges. Secondly, in order to do away with the *abuses of the past*, we propose to limit the power of the Secretary of Justice to transfer a judge from Jolo to Batanes or from Batanes to Jolo, with a view to avoid political interference. Now, if I may be permitted to ask the gentleman from Ilocos Norte, does he believe that his interpretation of the Constitution is correct?" (Lawyers Journal, July, 1954, pp. 325-326)

Respondents' Answer submitted that good reasons of public interest justify the exercise of the governmental powers of the Legislative and Executive departments (pp. 27-36), among which, to stop the obnoxious practice of "rigodon de jueces" (p. 31), to prevent the Sec. of Justice from handpicking judges to try specific cases (p. 32) and eventually to strengthen and fortify the independence of the judiciary (p. 35 of Respondents' Answer).

Counsel for petitioners cite the opinion of Secretary of Justice, Hon. Pedro Tuason, that the bill would be unconstitutional in so far as it would affect the tenure of the incumbent judges (p. 132, Francisco; p. 24 Sebastian), and state that the undersigned Solicitor General should follow the "opinion of his Chief" (p. 132, Francisco). Secretary Tuason merely expressed his *personal* opinion. According to Atty. Salazar, counsel of the petitioners, the concurring opinion of Mr. Justice Laurel in the Zandueta vs. de los Costa, 66 Phil. 615, "cannot be accepted as controlling" (p. 86, Salazar).

Supposing a constitution gives the Legislature the power to establish inferior courts but is silent as to the tenure of office of the judges; may the Legislature, after it has established such courts, abolish the same? The respondents will undoubtedly answer the question in the affirmative, invoking the principle that offices created by the Legislature may be abolished by the Legislature and that the power that creates can destroy. Now, supposing said constitution is amended by inserting therein a provision to the effect that judges of such courts shall hold office during good behavior; what would be the answer of the respondents to the question of whether the Legislature may abolish such courts and terminate the office of the judges? Without doubt they will give the *same answer*, that is, that the Legislature may abolish these courts because the power to create them carries with it the power to destroy. If that were so, what then is the difference between giving the Legislature the power to establish inferior courts without the constitutional guarantee of tenure of office of the judges, and giving the Legislature such power but securing at the same time in the Constitution the tenure of office of such judges?

If with or without a provision in the Constitution guaranteeing the tenure of office of a judge, the Legislature may without restriction abolish any court created by it, what then is this provision regarding security of tenure for? Is it conceivable that this provision was inserted in the Constitution for no purpose or effect? Since no sensible man would think that the provision guaranteeing the tenure of office was inserted in the Constitution without any purpose at all, and that a constitution without such provision has the same effect as a constitution containing the same, with regard to the power of Legislature to terminate the office of a judge by abolishing his court, we have to conclude that such provision places a limitation upon the power of the Legislature to abolish courts. In other words, the unrestricted power of the Legislature to abolish courts created by it, when the constitution does not guarantee the tenure of office of the judges of said courts, becomes restricted when the constitution guarantees and protects the tenure of office of the judges of the courts created by the Legislature.

The second reason why we say that the second theory is the most sound among the three is because the provision of the Constitution securing the tenure of office of the judges has for its object and effect to establish the complete independence of the judiciary, not only in its operation among the people, but as against possible encroachment by the other coordinate branches of the government. On this score, we can do no better than to quote the pronouncements of some of the most eminent American justices on the matter, which we arranged in the form of syllabi.

McCulley v. State, 102 *Tenn.*, 509, 53 *So.* 184, *Dissenting Opinion of C. J. Snodgrass.*

POWER OF CREATING AND ABOLISHING JUDGES; ENGLISH THEORY. — The power of creating or abolishing judges never did, and does not now, abide in the parliament of England. The English theory was that the king was the judge in England. Later this kingly power was delegated by him to others appointed by him. They existed with him (subject to his power of removal), and officially died with him, if not before removed. Yet, later, on recommendation of the king, the last feature was changed by act of parliament, and the tenure of the office of each incumbent was extended beyond the death of the king; and the office was ultimately held during good behavior, which, of course, meant during life, if not forfeited by misconduct. But still to this was added a right of of removal by the king upon what was termed an "address" of both houses of parliament, and which, it is said, was made in the form of a resolution.

DEPENDENT JUDGES. — It will be remembered by all students of history that the course of dependent judges rendered truculent by control, and made infamous by subservience, had created for the English people a more insupportable condition of legal tyranny and authorized oppression than had ever found existence in the

How then can counsel for petitioners argue that Secretary Tuason's personal opinion should be controlling?

Former judiciary laws required incumbents to vacate—

Prof. Enrique M. Fernando in his oral argument mentioned Act No. 2347 and Act No. 4007 and both Acts required the incumbent judges to vacate their positions. We quote the pertinent provisions of said Acts.

> "Sec. 7. Of the appointment of the judges and auxiliary judges of Courts of First Instance. — The district judges appointed by the Governor-General, with the advice and consent of the Philippine Commission to serve, subject to the provisions of sections eight and nine hereof until they have reached the age of sixty-five years: Provided, That no person shall be appointed to said positions unless he has practiced law in these Islands or in the United States for a period, of not less than five years or has held during a like period, within the Philippine Islands or within the United States an office requiring a lawyer's diploma as an indispensable requisite: Provided further, That before assuming such judicial office he shall qualify as a member of the bar of the Supreme Court of the Philippine Islands if he has not already done so; And provided, further, *That the present judges of Courts of First Instance, judges-at-large, and judges of the Court of Land Registration vacate their positions on the taking effect of this Act*, and the Governor-General, with the advice and consent of the Philippine Commission, shall make *new appointments* of judges in accordance with the provisions of this Act, taking into account, in making said appointments, the services rendered by the present judges." (Act No. 2347, enacted February 28, 1914; underlining supplied.)
>
> "Sec. 41. All the present Secretaries and Undersecretaries of Department, except the Secretary of Public Instructions, the judges and auxiliary judges of first instance, the Public Service and Associate Public Service Commissioners, and the chiefs and assistant chiefs of bureaus and offices, except the Insular Auditor, the Deputy Insular Auditor, and those detailed from the United States Government, *shall vacate their respective positions on the taking effect of this Act*, and the Governor-General shall, with the consent of the Philippine Senate, make *new appointments* of Secretaries and Undersecretaries of Department, judges and judges-at-large of first instance, Public Service and Associate Public Service Commissioners, and chiefs and assistant chiefs of bureaus and offices, in accordance with existing law as modified by this Act: Provided, That in the making of such appointments the services rendered by the present incumbents shall be taken into account." (Act No. 4007, approved December 5, 1932)

The judicial incumbents, including judges-at-large and cadastral judges, were required to vacate their positions upon the effectivity of said Acts. There was no question raised as to the constitutionality of said legislative Acts. And both Acts required *new appointments*. The claim of counsel for petitioners that under Rep. Act No. 1186, which abolished the positions of judges-at-large and cadastral judges — "no new appointment will be necessary" (p. 134, Francisco) — can not be correct, because Rep. Act No. 1186 abolished all the positions of Judges-at-large and Cadastral judges, and petitioners were not *District* judges. Another counsel of petitioners states — "of course they also could have been extended *new appointments as district judges* by the President, the same to be confirmed by the Commission on Appointments (p. 21, Sebastian). But certainly petitioners were not entitled to automatic appointment as District judges.

Petitioners could not be automatically appointed District judges—

Counsel for petitioners remind us that in the original Laurel

widest usurpation of pretenders or the most abominable license of established despots. This, among all the grievances which caused revolution and advanced the cause of freedom there, and gave it absolutely here, was the result of such disregard of popular rights and liberties by dependent creatures of the crown called "judges."

COMPLAINTS OF THE AMERICAN COLONIES. — It is to be remembered that one of the complaints of the American colonies against the injustice of the king was that: "He has obstructed the administration of justice by refusing his assent to laws for the establishment of judiciary powers. He has made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries."

INDEPENDENT JUDICIARY; HOW SECURED. — An independent judiciary in an independent government the tenure was for life or (what may be the same thing, and must be, to a faithful and irreproachable official) during good behavior, and there was a provision against decreasing judicial salaries.

INTENDMENT OF TENURE OF OFFICE PROVISION CLEARLY ESTABLISHED IN THE LIGHT OF HISTORY OF THE UNITED STATES. — "That the tenure of office provisions of the constitution were expressly intended to secure the term of office and the judges of the office during the tenure, subject alone to the defined grant of power of removal is firmly established in the light of history, and the conditions which led to the establishment of our federal and state forms of government. When we look to these, we find the full import of the framers of our organic law 'hammered and crystallized' in the few brief words which defined and secure judicial independence by a fixed tenure of office, and an undiminished compensation during that tenure. The struggle for judicial independence has been a long and eventful one. * * * Judicial independence was intended to be secured by the provision that 'the judges of both the supreme court and inferior courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuation in office.' (Const. U.S. art. 3, sec. 1.)* * * After the formation of the constitution it was submitted to the respective conventions of the states for adoption. The records of the debates in some of these conventions have been preserved. These debates establish beyond controversy that said clause of the federal constitution was intended to put the tenure of office of the entire federal judiciary beyond any legislative interference whatever, except by impeachment. * * *"

REASONS FOR ADOPTING THE JUDICIAL TENURE OF OFFICE CLAUSE. — *According to the debates in states conventions*:

Massachusetts Convention. — Mr. Tacker: "* * * *The independence of judges is one of the favorable circumstances to public liberty, for when they become the slaves of a venal, corrupt court, and the hirelings of tyranny, all property is precarious and personal security at an end.*"

Connecticut Convention. — Mr. Elsworth, a Member of the Federal Convention: "This constitution defines the extent of the powers of the general government. If the general legislature should at any time overlap its limits, the judicial department is a constitutional check. If the United States go beyond their powers, — if they make a law which the constitution does not authorize, it is void; *and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void.* On the other hand, if the states go beyond their limits, — if they make the law which is a usurpation upon the general government, — the law is void; *and upright, independent judges will declare it to be so.*"

Virginia Convention. — Edmond Randolf, a member of the Federal Convention: — "* * * *If congress wish to aggrandize themselves by* oppressing the people, the judiciary must first be corrupted."

bill there was a provision for the automatic reappointment of the judges-at-large and cadastral judges into district judges (Sec. 5 of Bill No. 170, p. 12, Sebastian), but said provision of the bill was eliminated in the final law, Rep. Act No. 1186. The reason, we submit, was the realization that such a provision would be unconstitutional as constituting "legislative appointment" (pp. 21-22 of Answer), and therefore an interference with the sole power of exclusive prerogative of the Executive to appoint. (p. 23 of Answer)

In fact petitioners' positions as judges-at-large and cadastral judges are tainted with unconstitutionality (p. 28 of Answer), because they violate the spirit, if not the letter of Art. VIII, sec. 7 of the Constitution which provides:

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

The reply of petitioners to respondents' answer did not traverse, much less discuss this constitutional issue. The scanty discussion of this issue by counsel for petitioners (pp. 128-131, Francisco; pp. 10-11, Salazar; none by Sebastian) would reveal the weakness of petitioners' position on this new point raised by the undersigned counsel for respondents. The fact that this issue was never raised before or the constitutionality of the positions of Judges-at-large and Cadastral Judges have been taken for granted cannot estop the respondents from raising this new and vital issue. Certainly the fact that such judges had no permanent residence as required by Art. VIII, Sec. 7, and could furthermore be designated from province to province at the sole will or discretion of the Department Head (Sec. 53 of Rep. Act No. 296) does violence to said sec. 7 of Art. VIII, which prohibits the transfer of a judge "without the approval of the Supreme Court". If therefore the positions of such judges-at-large and cadastral judges were tainted with constitutional infirmity from their very existence, petitioners can hardly have any right or personality to question the validity of Section 3 of Republic Act No. 1186, which abolished such positions whose creation and continuance are of doubtful constitutional validity, and expressly repealed Section 53 of Republic Act No. 296.

Republic Act No. 1186 cannot be given prospective effect only—

Counsel for petitioners suggest that Section 3 of Republic Act No. 1186 should operate prospectively (Francisco, p. 147; Salazar, p. 30). This suggestion however cannot be adopted in view of the express provision of Section 3 of Republic Act No. 1186, which we quote again:

> "All the existing positions of Judges-at-large and Cadastral Judges are *abolished,* and section fifty-three of Republic Act Numbered Two hundred and ninety-six is hereby *repealed.*" (Underscoring supplied.)

The law abolishes "all existing positions," and expressly repeals Section 53 of Republic Act No. 296. If the power of Congress to abolish statutory courts is admitted, and the exercise thereof is constitutional, provided the law does not single out any particular judge or judges, even if the incumbents are deprived of their offices, which are clearly abolished, the law must be given the effect it openly expresses and the interpretation it clearly deserves.

Counsel for petitioners express the fear that "all judges of District Courts could thus be legislated out" (Sebastian, p. 26), and would thus demolish the independence of the judiciary, which "will henceforth be a myth" (Sebastian, p. 20). The fact is that Republic Act No. 1186 has not abolished any district judge. But if Congress should see fit for public interest to reduce or abolish some Courts of First Instance, we would still maintain that such exercise of Legislative power would be valid and constitutional within the framework of our Constitution, provided such a law would not *single out* any particular judge or judges. In the same

(*Continued on next page*)

Mr. Pendleton: — "* * * Whenever, in any country of the world, the judges are independent, the liberty and property are secure."

Mr. John Marshall: — "* * * If a law be exercised tyrannically in Virginia, to what can you trust? To your judiciary? What security have you for justice? Their Independence."

Mr. Henry: — "* * * The judiciary are the sole protection against a tyranical execution of the laws. But if by this system we loss our judiciary, and they cannot help us, we must sit down quietly and be oppressed."

North Carolina Convention. — Mr. Steele: — "* * * If the Congress makes laws inconsistent with the constitution, independent judges will not uphold them, nor will the people obey them."

It is clear from these debates that the constitution was considered as intending that the tenure of office and salaries of judges should not be disturbed during good behavior, and that a breach of the condition of good behavior should only be considered by means of an impeachment.

According to Hamilton: "According to the plan of the convention, all the judges who may be appointed by the United States are to hold their offices during good behavior, which is conformable to the most approved of the state constitutions, — among the rest, that of this state. The standard of good behavior for the continuance in office of the judicial-magistracy is certainly one of the most valuable of the modern improvements in the practice of government. * * * And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws. Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution, because it will be least in capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword, of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse, no direction either of the strength of the wealth of society, and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment, and must ultimately depend upon the aid of the executive for the efficacious exercise even of this faculty. This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power, that it can never attack with success either of the other two, and that all possible care is requisite to enable it to defend itself against their attack. It proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from the dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as from the natural feebleness of the judiciary it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; that as nothing can contribute so much to its firmness and independence as permanency in office, — this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and in a great measure as the citadel of the public justice and of the public security. The complete independence of courts of justice is peculiarly essential in a limited constitution. If, then, the courts of justice are to be considered as the bulwarks of a limited constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so ardous a duty. This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humors which the arts of designing men or the influence of particular conjunctures sometimes disseminate among the people themselves, and which, though they speedily give place to better information and a more deliberate reflection, have a tendency in the meantime to occasion dangerous innovations in the government and serious oppressions of the minor party in the community; for it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the constitution where the legislative invasions of it had been instigated by a major voice of the community."

According to Cooley: "This constitution provided that 'judges should hold their office during their good behavior.' Article 5, sec. 2. The meaning of these words is to be interpreted in the light of the history and conditions preceding the formation of the constitution. So interpreted, it seems beyond controversy that this provision was intended to secure to the judges a tenure of office safe from any legislative interference or abridgment, direct or indirect, except for cause for which the judge might become responsible by breaching the condition of good behavior, this being provided for by impeachment." (Cooley, Const. Lim., 6th ed., p. 80.)

—*According to Tucker*: "To give them the courage and the firmness to do it, the judges ought to be confident of the security of their salaries and station. The provision for the permanent support of the judges is well calculated, in addition to the tenure of their office, to give them the requisite independence. It tends also to secure a succession of learned men on the bench, who, in consequence of a certain, undiminished support, are enabled and induced to quit the lucrative pursuits of private business for the duties of that important station." (1 Kent, Comm., pp. 294-295.)

"This absolute independence of the judiciary, both of the executive and the legislative departments, which I contend is to be found both in the letter and spirit of our constitutions, is not less necessary to the liberty and security of the citizen and his property in a republican government than in a monarchy. Such an independence can never be perfectly attained but by a constitutional tenure of office, equally independent of the frowns and smiles of the other branches of the government. And herein consists one of the greatest excellencies of our constitution, — that no individual can be oppressed whilst this branch of the government remains independent and uncorrupt; it being a necessary check upon the encroachments or usurpation of power by either of the other. And as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches, who have the custody of the purse and the sword of the confederacy, and as nothing can contribute so much to its firmness or independence as permanency in office, this quality therefore may

MEMORANDUM FOR RESPONDENTS

(*Continued from page 487*)

way that a superior court, like the Court of Appeals, was created, abolished and then recreated (pp. 11-12 of Respondents' Answer).

Conclusion:

The undersigned counsel for respondents is as much interested as counsel for petitioners in maintaining and preserving an independent judiciary. In fact, we want to further strengthen and fortify the independence of the judiciary (pp. 35-36 of Respondents' Answer). This is one reason why we justify the abolition of judges-at-large and cadastral judges as expressly provided by Section 3 of Republic Act No. 1186.

P R A Y E R

WHEREFORE, the prayer contained in respondents' Answer dated July 20, 1954, is hereby respectfully reiterated.

Manila, September 4, 1954.

AMBROSIO PADILLA
Solicitor General

be justly regarded as an indispensable ingredient in the constitution, and in a great measure as the citadel of the republic, justice and the public security." (1 Tuck. Bl. Comm. Append. 354, 360.)

—*According to Story*: "The reasons in favor of the independence of the judiciary apply with the augmented force to republics, and especially to such as possess a written constitution, with defined powers and limited rights. It is obvious that, under such circumstances, if the tenure of office of the judges is not permanent, they will soon be rendered odious, not because they do wrong, but because they refuse to do wrong; and they will be made to give way to others who shall become more pliant tools of the leading demagogues of the day. There can be no security for the minority, in a free government, except through the judicial department. In the next place, the independence of the judiciary is indispensable to secure the people against the intentional as well as unintentional usurpations of the executive and legislative departments. It has been observed with great sagacity that power is perpetually stealing from the many to the few, and the tendency of the legislative department to absorb all the other powers of the government has always been dwelt upon by statesmen and patriots as a general truth, confirmed by all human experience. * * * In a monarchy the judges, in the performance of their duties with uprightness and impartiality, will always have the support of some of the departments of the government, or at least of the people. In republics they may sometimes find the other departments combined in hostility against the judicial, and even the people, for a while, under the influence of party spirit and turbulent factions, ready to abandon them to their fate. Few men possess the firmness to resist the torrent of popular opinion, or the content to sacrifice present ease and public favor in order to earn the slow rewards of a conscientious discharge of duty, the sure that distant gratitude of the people, and the severe but enlightened award of posterity. The considerations above stated lead to the conclusion that in republics there are in reality stronger reasons for an independent tenure of office by the judges — a tenure during good behavior — than in monarchy. Indeed, a republic with a limited constitution, and yet without a judiciary sufficiently independent to check usurpation, to protect public liberty, and to enforce private rights, would be as visionary and absurd as to society organized without any restraints of law. In human governments there are but two controlling powers, — the power of arms and the power of laws. If the latter are not enforced by a judiciary above all fear and above all reproach, the former must prevail, and thus lead to the triumph of military over civil constitutions. The framers of the constitution, with profound wisdom, laid the corner stone of our national republic in the permanent independence of judicial establishment. Upon this point their vote was unanimous. The main security relied on to check an irregular or unconstitutional measure, either of the executive or the legislative department, was, as we have seen, the judiciary. To have made the judges, therefore, removable at the pleasure of the president and congress, would have been a virtual surrender to them of the custody and appointment of the guardians of the constitution. It would have been placing the keys of the citadel in the possession of those against whose assaults the people were most strenuously endeavoring to guard themselves. It would be holding out a temptation to the president and congress, whenever they were resisted in any of their measures, to secure a perfect irresponsibility by removing those judges from office who should dare to oppose their will. Such a power would have been a signal proof of a solicitude to erect defenses around the constitution for the sole purpose of surrendering them into the possession of those whose acts they were intended to guard against. Under such circumstances, it might well have been asked where could resort be had to redress grievances or to overthrow usurpation. . . . It is almost unnecessary to add that, although the constitution has with so sedulous a care endeavored to guard the judicial department from the overwhelming influence or power of the other coordinate departments of the government, it has not conferred upon them any inviolability or irresponsibility for an abuse of their authority. On the contrary, for any corrupt violation or omission of the high trust confided to the judges they are liable to be impeached, as we have already seen, and, upon conviction, removed from office. Thus, on the one hand a pure and independent administration of public justice simply provided for, and on the other hand an urgent responsibility secured for fidelity to the people." (Story, Const. Sec. 1610, 1612-1614, 1619, 1621, 1624, 1628, 1635.)

TENURE OF OFFICE CLAUSE CAN NOT BE ABRIDGED OR LIMITED BY THE CLAUSE GRANTING THE LEGISLATURE THE POWER TO ESTABLISH SUPERIOR AND INFERIOR COURTS. — This constitution (of 1796) provided that judges should "hold their offices during their good behavior." Article 5, Sec. 2. The meaning of these words is to be interpreted in the light of the history and conditions preceding the formation of the constitution. So interpreted, it seems beyond controversy that this provision was intended to secure to the judges a tenure of office safe from any legislative interference or abridgment direct or indirect except for causes for which the judge might become responsible by breaching the condition of good behavior; this being provided for by impeachment. Cooley, Const. Lim (6th Ed.) p. 80. It is evident that the judicial tenure of office provided for in the constitution of 1796 was modeled after the federal constitution, and was intended to bear the same meaning and construction. Under these conditions, and with these preceding events in the knowledge of the convention, it seems wholly unreasonable to suppose this tenure of office clause was intended to be in any way abridged or limited by the clause in said constitution providing that the judicial power of the state "shall be vested in such superior and inferior courts of law and equity as the legislature shall from time to time direct and establish." Article 5, Sec. 1. The convention of 1896 framed an organic law (said by Jefferson to be "the least imperfect and most republican" of any then framed) to govern a free people. Its every intent and purpose must have been to erect every barrier to oppression, and to provide every possible safeguard for the protection of the people. With the dangers which attended a judiciary dependent upon the king, and the protest of the Declaration of Independence, in its knowledge, it seems incredible that this convention intended to submit judicial independence to abridgment and destruction by legislative will; thus transferring dominion from an executive power to a legislative power, — a change from one to many masters. The authority of said convention given to the legislature to "direct and establish courts," viewed in the light of history, could not have been intended to permit the destruction of the judicial tenure expressed in terms, and thus by a mere implication permit the power to interfere with judicial independence by the abolition of courts. (McCulley v. State, 102 Tenn. 509.)

Commonwealth v. Gamble
(62 *Pa.* 343)

CONSTITUTIONAL LAW; TENURE OF JUDGES FIXED BY THE CONSTITUTION. — The respondent judge, having been elected and subsequently commissioned as president judge of the 29th district, took the oath of office and entered upon the performance of his duties as judge of said court. The tenure of the office was, by the constitution, to continue for 10 years, on the only condition that he would so long "behave himself well." *Held*: Having taken the office and entered upon the performance of his duties, its duration was assured to him by the constitution for the full period mentioned, subject to be terminated only by death, resignation or breach of the condition, which breach could not be legislatively determined, but only by the trial before the senate on article of impeachment duly preferred, or, in the case the breach amounted to total disqualification, perhaps by address of 2/3 of each branch of the legislature. These are the ordained constitutional remedies in such cases and there can be no others.

TENURE AND COMPENSATION OF JUDGES; OBJECT.— The constitutional provision regarding tenure of office and the other requiring that adequate compensation shall be provided by law for the judges, which shall not be diminished during the continuance of

his office, not only give the protection but inviolability to the tenure of judicial office, by any but the constitutional mode referred to. Their object and effect were, undoubtedly, to establish the complete independence of the judiciary, not only in its operation among the people, but as against possible encroachment by the other coordinated branches of the government.

REASON FOR PROTECTING THE JUDICIARY. — Possessing neither the power of the purse nor the sword, as the executive and the legislative branches, may be said to do, the judiciary was by far the weakest branch of the government; and as its operations were necessarily to affect individual interests in the community, it was obviously proper, in order to secure its independence against the action of the other branches more liable to be swayed by impulse, or operated upon by individual, party or sectional influence, to protect it by express constitutional barriers; and it was so done.

INDEPENDENCE OF THE JUDGES. — The independence of the judges is equally requisite to guard the constitution and rights of individuals from the effect of those ill-humors which the acts of designing men, or the influence of particular conjunctures, sometimes create among the people themselves, and which, although they speedily give place to better information and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and severe oppression of the minor party in the community. (Commonwealth v. Mann, 5 W. & S. 403.)

AN INDEPENDENT JUDICIARY MUST BE A CARDINAL PRINCIPLE. — An independent judiciary must ever be a cardinal principle of constitutional government. It was adopted in forming the federal constitution, both in regard to the express tenure of the office, and in providing a fixed compensation, undiminishable during the continuance of the office. And so in every state in the union this independence is secured, during the tenure of the office, by constitutional provisions, and judges are made secure from interference from any quarters, with the exercise of their jurisdiction and powers, excepting in the modes prescribed in the several constitutions. These provisions were not the result of a wise philosophy or farseeing policy, merely. They resulted, rather from severe trials — experience — in the country from which we have largely derived our laws and many of our principles of liberty. History has preserved numerous melancholy examples of the want of a judiciary independent by law, before it was accomplished in England.

UNCONSTITUTIONALITY OF LEGISLATION ABOLISHING A JUDICIAL DISTRICT. — The judicial office is created by the constitution, and so is its tenure, and the compensation is protected by it when once fixed by the legislature. The amenability of the judges is also provided for, and this excludes all other modes. Thus is independence supposed and intended to be secured by the constitution. It must follow, therefore, that any legislation which impinges on the feature of the constitution is invalid. Not only was the judiciary thus made independent, but, as a co-ordinate branch of the government, its protection and existence were supposed to be completely assured.

ID.; ID. — Could the principle of the independence of the judiciary and, at the same time, its integrity as a coordinate branch of the government, have been more effectually assailed than by the passage of the act repealing the twenty-ninth judicial district, and its transfer bodily to another district and to other judges? Even if the commission might, for compensation, endure after all power and every duty under it had ceased — a result I do not admit — the act was not less destructive of the principle of independence with which it was the purpose of the framers of the constitution to invest the judges. What could be more destructive to all independence of action of a judge than the momentary liability, during the recurring sessions of the legislature, to be dismissed from the exercise of the functions of his office by the repeal or abolition of his judicial district? If, all the while, he must be conscious that he exercises the powers and authority conferred by his commission only by the forbearance of the legislature, although it might be possible that independence of action might still exist, it would be an exception; as a rule, it would be a myth. Such a state of things would follow a rule, the result of affirming the constitutionality of the act in question, would be utterly subversive of the independence of the judiciary, and destructive of it as a co-ordinate branch of government. The case of the twenty-ninth district this year might become that of any, or half, the other twenty-eight districts next year, for reason quite as legitimate as those operating to procure its repeal. Establish this power in the legislature, and it will be as easy, as it will be common, for powerful corporations and influential citizens to move the legislature to repeal districts, and supersede judges who may not be agreeable to their wishes and interests, and transfer their business to other jurisdictions supposed to be more favorably inclined. This would be destructive of all that is valuable in the judicial office, and preservative alone of those evil qualities which flow from a subverted and subservient judiciary.

ID. — I think in this state there has never been known a more palpable and direct blow at one coordinate branch of the government by the others, or one so destructive of the uses for which it was established, as is contained in this act, though undesigned, we must believe. If there were no special reasons for holding it unconstitutional, these general views would require it so to be held.

TENURE OF OFFICE CANNOT BE TERMINATED BY LEGISLATIVE ACTION. — The constitution, after providing for the election and commissioning of judges, fixes the tenure of their offices, by providing that the "president judges of the several courts of common pleas, and of such other courts as are or shall be established by law, and other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well." Judge Gamble's commission had nine and two-thirds years to run, when the act in question was passed. By the express terms of the condition it was inviolable, by any authority for any other cause, during the period, than a breach of the condition, in the commission, for good behavior; and, as already said, that could be redressed only by impeachment, or an address by the legislature. This is the mode fixed and ordained by the constitution, and is utterly incapable of being supplied or supplemented, directly or indirectly, by legislative action.

THE JUDICIAL OFFICE IS INCAPABLE OF ANY LIMITATION BUT THAT ATTACHED TO IT. — This is a constitutional grant of the right to exercise the powers and authority belonging to the office of president judge, and is incapable of any limitation but that attached to it. If this were not so, and it might be changed by legislative action, then would the authority of the constitution be subject and subordinate to legislative authority — a position not to be entertained for a single moment, especially when it is remembered that what the constitution itself ordains is so much of the sovereign power withheld from the legislative power.

ID.; POWER TO REORGANIZE COURTS. — The aggregate of the duties of a judge in any given district may be materially diminished by a division of his district, or by the election of an assistant. But that grows out of a power to reorganize or regulate the courts — a power not withheld by the constitution, leaving the authority and jurisdiction pertaining to the office intact; and is quite a different thing from taking them away in toto. Their extent may, it is admitted, be changed, increased or diminished by a reorganization of the courts. This is an express provision of the constitution, and a condition to which the office is necessarily subject. With these exceptions, no other legislative interference is legal or constitutional.

ID.; PROHIBITION IMPLIED IN THE GRANT AND TENURE OF OFFICE. — The grant and tenure of the office of judge are fixed by the constitution, and are necessarily an implied prohibition of all interference with it, in these particulars, by any other authority.

ID.; THE OFFICE AND TENURE OF OFFICE ARE INSEPARABLE AND THE LEGISLATURE CANNOT TAKE THEM AWAY DURING THE LIFETIME OF THE COMMISSION. — The constitution ordains that the office of president judge shall continue for ten years, and this fixes inevitably the duration of the authority and powers which constitute it an office. They are inseparable; and it establishes that the legislature, by an ordinary act of legislation, cannot take them away during the life-time of the commission.

ID.; ID.;—If the legislature could blot out a district, it could limit the duration of the commission granted to a less period than ten years, if it might so choose. That, it cannot shorten the tenure of the office of a judge, as fixed by the constitution, is certain, and this ought to establish that it can pass no act to do by indirection that which may not be done directly.

ID.; ID.—The act displaces Judge Gamble as the president judge, and appoints Judge White and his law associate to hold the courts therein. If such a thing can be done in one district, it may be done in all, and thus, not only would the independence of the judiciary be destroyed, but the judiciary as a co-ordinate branch of the government, be essentially annihilated.

State v. Leonard, 86 *Tenn.* 485, 7 *S. W.* 453.

CONSTITUTIONAL LAW; CONSTITUTIONAL TENURE OF OFFICE CANNOT BE TERMINATED BY THE LEGISLATURE. —Acts. Tenn. 1887, c. 84, repealed Acts Tenn. 1885, c. 71, under which defendant had been duly elected to the office of county judge of Marshall county, and conferred the power and duties incident to it on the chairman of the county court. *Held*: That this act could not deprive defendant of office for the remainder of the term for which he was elected, under Const. Tenn. art. 6, providing that the terms of office of the judges of such inferior courts as the legislature from time to time shall establish shall be eight years.

IBID.; IBID.—The act of 1887 did not attempt to abolish or diminish the powers and duties appertaining to the office. It simply repealed so much of the act as applies to Marshall county, (another county having had a similar chance made in its court system by the same act) and undertook to re-establish the office of chairman of the county court after the first Monday in April, 1887, and to vest in these officers all the rights, privileges, jurisdiction, duties, and powers pertaining to the officers as established and exercised by the county judge. If this legislation had merely named the defendant, and by name and title removed him from the position, and given it to another, it would not have more directly accomplished the purpose actually effected, if this be valid.

IBID.; PURPOSE OF THE CONSTITUTION IN FIXING THE TERMS OF JUDGES.—The constitution in fixing the terms of the judges of inferior courts elected by the people at eight years intended not only to make the judiciary independent, and thereby secure to the people the corresponding consequent advantages of courts free from interference and control, and removed from all necessity of being constant and frequent experimenting with county systems, than which nothing could be more injurious or vexatious to the public. It was intended when the legislature established an inferior court that it should exist such a length of time as would give opportunity for mature observation and appreciation of its benefits or disadvantages, and that the extent of its durability might discourage such changes as were not the result of most mature consideration.

IBID.; THE CONSTITUTION GUARDED THE JUDICIAL DEPARTMENT AGAINST BEING AT THE MERCY AND WHIM OF EACH RENEWING LEGISLATURE.—Realizing that a change, if made, to constitute an inferior court, would fix that court in the system of eight years, a legislature would properly consider and maturely settle the question as to the propriety and desirability of such change or addition to our system; and, conscious of the impropriety and the hazard of leaving the judicial department of the government at the mercy and whim of each renewing legislature—itself elected for but two years,—the framers of the constitution wisely guarded against these evils by the section referred to. Properly construed and enforced it is effectual for that purpose. Disregarded or impaired by such interpretation as leaves it to exist in form, without force or substance, and we have all the evils and confusion of insecure, changing, and dependent courts, frequent and constant experimenting with systems provided in haste, tried in doubt, and abolished before their merits or demerits were understood. It would be a mortifying reflection that our organic law maker intended any such result in their advanced efforts to make a government of three distinct independent departments; and still more humiliating, if we were driven to the conclusion that, while they did not intend it, they had been so weak or inept, in the phraseology adopted, as to have accomplished it. Neither the intent nor the language of the constitution employed to express it fortunately bears any such construction.

IBID.; JUDGES ENTITLED TO THE PROTECTION AGAINST UNCONSTITUTIONAL LEGISLATION DEPRIVING THEM OF THEIR OFFICE.—When the court whose judge is elected by the people of one or more counties in district or circuit is constituted by the legislature, and an election had, and the officer commissioned and qualified, it is not in the power of the legislature to take from him the powers and emoluments of office during the term of eight years by devolving these intact upon another, or otherwise. The court so constituted, and judge elected, in this instance, was under the authority to establish inferior courts already quoted. The incumbent of the office was a judicial officer of this state (State v. Gleen, 7 Heisk, 486; State v. McKey, 8 Lea, 24) and is entitled to the protection of the constitution as such, against unconstitutional legislation to deprive him of his office.

IBID.; THE CASE AT BAR DISTINGUISHED FROM STATE V. CAMPBELL AND STATE V. GAINES. — It is is argued, however, that this act of removal is the same as the act abolishing a circuit court, with all its powers and jurisdiction, from the consequences of which it has been held by this court a circuit judge would be deprived of office. State v. Campbell, (M.S.); State v. Gaines, 2 Lea, 316. The act construed in these cases was one abolishing the Second circuit court of Shelby county,—the First and Second. As one was enough to do the business of the county, or supposed to be, the legislature abolished this court, leaving the entire business of both courts to be done by the first; thereafter to be styled "The Circuit Court of Shelby County." It was held in the cases referred to that the legislature might abolish a circuit court, held for a circuit or given territory, and that when the court was abolished the office of judge thereof terminated. Without desiring to be understood as assenting to the conclusion reached in those cases, (to the reasoning of which we do not subscribe) and which conclusions, we may remark in passing, were reached by a divided court, and against the weight of many opinions in other states, it is sufficient to say that the case here presents no such question as that determined there. The act of 1875 construed had abolished the court. It did not leave the court with all its powers, jurisdiction, rights, and privileges intact, and devolve them upon another, as in this case. Here the court was left as it existed, except the change made in its official head. He was simply removed by the operation of the act, if it could take effect according to its terms, and another put in his place.

IBID.; IBID.—It cannot be doubted that, if the legislature had said in the act of 1875, as in the act now being construed, that the office of the judge of the Second circuit court should be abolished, and that the court should remain, with like jurisdiction and duties, but these should be exercised by another officer, leaving the First circuit court also existing with its original jurisdiction and duties only,—that such would have been declared void. Nor can it be doubted that if the legislature should now declare that the office of a given circuit is hereby abolished, leaving the circuit and its court machinery as it, except the removal of the presiding judge, such act would be void. If this were not true, the legislature, at its next or any subsequent session, might pass a law setting out the

circuits and chancery divisions by numbers, and declaring that the office of judge of each be abolished.

IBID.; CONSTITUTIONAL TEST.—It is nc argument in answer to this to say that the legislature will not do this. It is not a question of what they will do that we are now considering; it is a question of constitutional power of what it can do. The question as to how such power is granted, or restraint imposed, cannot be determined on the probability or improbability of its exercise. If it can abolish in this way the office of county judge, it can abolish the office of any inferior judge, as all are alike protected or not protected by the clause of the constitution referred to.

IBID.; THE INDEPENDENCE OF THE JUDICIARY MUST BE GUARDED AGAINST RASH AND CONSTANT EXPERIMENTS OF LEGISLATION.—For the honor of the framers of the Constitution, the best interests of our people, the independence of the judiciary, and the security and order of our court system against rash and constant experiments of legislation, it offers us much satisfaction to give the constitution its plain, rational, and unobscure effect to invalidate legislation of this character, and be able to say that nothing as yet decided by our court stands as a precedent in the way of our doing so. But if there were, it would afford us pleasure to overrule it.

State, ex rel. Gibson v. Friedley
21 *L. R. A.*, 634

CONSTITUTIONAL LAW; THE LEGISLATURE CANNOT LEGISLATE OUT A JUDGE.—The Constitution of Indiana provides that the circuit courts shall each consist of one judge, that the state shall, from time to time, be divided into judicial circuits, a judge for each circuit shall be elected by the voters thereof. He shall reside within his circuit and hold his office for a term of six years, if he so long behave well. The Constitution likewise provides that there shall be elected, in each judicial circuit, by the voters thereof, a prosecuting attorney, who shall hold his office for three years. *Held*: It seems beyond the power of the legislature to legislate a judge and prosecuting attorney out of office, and if the legislature cannot by a direct act deprive them of their offices, neither can it do so by the indirect mode of abolishing their circuit. The authors of our constitution well understood the long struggle for many years previous to secure the independence of the judiciary and the tenure of office of the judges; hence the Constitution divides the powers of the state government into three distinct co-ordinate departments, carefully excluding any control of one over another. If the legislature, by a special act, may remove one judge or one prosecuting attorney, it may remove any and all such officials in the state, and hence they would be at the mercy of any legislature whose amity or ill-will they may have incurred.

ID.; LEGISLATURE CANNOT TRANSFER THE ENTIRE CIRCUIT OF ONE JUDGE AND ATTACH IT TO ANOTHER CIRCUIT.—If the general assembly can transfer bodily the entire territory which constitutes the locality in which the judge or prosecuting attorney may lawfully exercise the functions and duties of his office, and attach that territory to another circuit, then it can strip the incumbents of their respective offices as effectually as it is possible to do so by any words that can be used. It is, in fact, as much a removal of the judge and prosecutor so deprived of all territory as would be a judgment of a supreme court removing either of them from his trust. It is not to be assumed that the framers of the constitution builded it so unwisely as to secure to a judge an office and its tenure, and the right to exercise all its prerogatives within a defined locality for a period of six years, if he so long behave well, and by the same organic law intended that the general assembly might remove him, at its will, from the exercise of all the privileges and duties pertaining thereto, without a hearing, without a conviction for misconduct, under the guise of "from time to time dividing the state into judicial circuits."

ID.; LIMITATIONS OF THE LEGISLATIVE POWER TO DIVIDE THE STATE INTO CIRCUITS.—The division of the state into judicial circuits may be exercised by the legislature, where the act does not legislate judges and prosecutors out of their respective offices, but not otherwise. The general assembly may add to, or may take from the territory constituting a circuit. It may create new circuits. It may abolish a circuit, if the act be made to take effect at, and not before the expiration of the terms of office of the judge and prosecutor of such office, as constituted, at the time of the act. The general assembly has the power, at its discretion, to divide a judicial circuit, at any time, during the terms of office of the judge and prosecuting attorney of such circuit, subject only to the restrictions that the legislature cannot, by any legislation, abridge the official terms of either of such officers, nor deprive either of them of a judicial circuit, wherein he may serve out the constitutional term for which he was elected.

State ex rel, v. Link, Sup. Ct. of Tenn.,
Jan. 15, 1948, 111 *S. W. 2d* 1024.

CONSTITUTIONAL LAW; ABOLITION OF COURT OPERATES TO VACATE OFFICE OF JUDGE.—The power to create the office of county judges or judge of other inferior courts was conferred on General Assembly by constitutional provision which authorized establishment of "inferior courts." Terms of all judges, including judges of inferior courts, are fixed by the Constitution at 8 years, and their tenure cannot be impaired except where Legislature finds it necessary to redistribute business of courts for purposes of economy and efficiency, and, when such rearrangement results in abolition of the tribunal, it operates to vacate office of judge who presided over such tribunal.

AN ACT WHICH ABOLISHED THE OFFICE OF JUDGE BUT DID NOT ABOLISH COURT OVER WHICH THE JUDGE PRESIDED IS UNCONSTITUTIONAL.—Where county judge for Stewart county was elected and commissioned according to law, an act which abolished the office and repealed act which created it, but which did not abolish court over which judge presided, was an unconstitutional exercise of legislative power.

State v. Mabry, Sup. Ct. of Tenn.,
Nov. 20, 1953, 178 *S. W. 2d* 379.

CONSTITUTIONAL LAW; ACT PURPORTING TO ABOLISH OFFICE OF COUNTY JUDGE INVALID.—Private Act purporting to abolish the office of County Judge by repealing the private act creating the court and undertaking to create and establish a new county court of Clay County and naming a chairman thereof was invalid as an attempt to defeat the right of the judge thereto elected and holding office in accordance with the existing law.

IBID.; A JUDGE CANNOT BE LEGISLATED OUT OF OFFICE.—We cannot close our eyes to the palpable effort to legislate the relator Bailey out of office and substitute in his place and stead another person who is designated in another private act to perform the same official duties. Chapter 53 of the Private Acts of 1943 purports to abolish the office of County Judge by repealing the act that created it. Eight days after the repealing act was approved by the Governor the Re-Districting Act was passed in which defendant Mabry was named as "Chairman of the County Court." The duties of this office were identical with that of county judge under the act which was sought to be repealed. The jurisdiction was the same in all respects.

IBID.; LEGISLATURE CANNOT REMOVE A JUDGE BY ABOLISHING THE OFFICE.—The legislature cannot remove a county judge by abolishing the office and devolving the duties upon a chairman of the county court.

IBID.; DISTINCTION BETWEEN STATUTES INEFFECTIVE TO REMOVE A JUDGE FROM OFFICE AND STATUTES THAT ACCOMPLISH REMOVAL BY ABOLISHING THE TRIBUNAL.—The distinction between statutes ineffective to remove a judge from office, and statutes that accomplish removal by abolishing the tribunal and transferring its business to another, was made clear by Mr. Justice Wilkes in Judges Cases, 102 Tenn. 509 560, 53 S. W. 134, 146, 46 L.R.A. 567.

In Re Opinion of the Justices, Supreme Judicial Court of Massachusetts, April 15, 1930; 271 *Mass.* 575, 171 *N. E.* 237.

CONSTITUTIONAL LAW; TENURE OF OFFICE DURING GOOD BEHAVIOR.—The tenure of office during good behavior imports not only the length of the term but also the extent of service. When a constitution has made definite provision covering a particular subject, that provision is exclusive and final. It must be accepted unequivocally. It can neither be abridged nor increased by any or all of the departments of the government.

Commonwealth v. Sheatz, 77 *Atl.* 547.

CONSTITUTIONAL TENURE OF OFFICE.—When the Constitution fixes the duration of a term, it is not in the power of the legislature either to extend or abolish it. The legislature has no power to enact a law which, in its effect, would create a vacancy.

The case of *State v. Noble*, 118 Ind. 350, 4 L. R. A. 101, fully establishes the independence of the judiciary. The legislature cannot extend or abridge the term of an office, the tenure of which is fixed by the constitution.

In *State v. Johnston*, 101 Ind 223, it is decided by the court that the general assembly has the power, at its discretion, to divide a judicial circuit, at any time, during the terms of office of the judge and prosecuting attorney of such circuit, subject only to the restrictions that the legislature cannot, by any legislation, abridge the official terms of either of such officers, nor deprive either of them of a judicial circuit, wherein he may serve out the constitutional term for which he was elected.

In *Hoke vs. Henderson* (N.C.) 25 Am. Dec. 704, *note* 1, it is said: "It is without the power of the legislature to indirectly abolish the office by adding the circuit of the incumbent to another then existing, and this even if it be within the power of the legislature to create new or alter old circuits, for that power must be so exercised as to leave the incumbent his office.

"But if the constitution provides for the duration of an office, the legislature has no power, even for the purpose of changing the beginning of the term, to alter its duration."

In *People vs. Dubois*, 23 Ill. 547, the supreme court of Illinois holds that although the creation of new judicial districts was expressly authorized by the constitution, yet no new districts could be created by which the judge in commission could be deprived of a right to exercise the functions of his office during the continuance of his commission. The court says: "The question is, Can the legislature expel the circuit judge from his office by creating a new district taking from him the territory which constituted his district? The bare reading of the constitution must convince every one that it was intended to prohibit such a proceeding."

To vacate the office of a district judge already elected by the people, and serving, by an act increasing the number of judges, would clearly be, in effect, the removal of a judge from office when his office was not destroyed. To allow the legislature, while making one new district, to legislate the judge of an old district out of office, and provide for the appointment or election of two new judges, would clearly be vicious in principle, and this is the class of legislation which fails within the constitutional inhibition. *Aikman v. Edwards*, 42 *Pac.* 366.

"However, we lay no stress upon this legislative declaration, further than as it shows what the General Assembly understood what the Constitution meant. For the term of office of circuit judge being, as we have seen, fixed by the organic law, and beyond the control of the Legislature, no enactment that they might indulge in would cause the term to end a day sooner or a day later. All that portion of the third section of the act above quoted, which prescribes the duration of the term, and the election, may therefore be stricken out as superfluous; these matters being regulated by the Constitution and general laws of the state." *State v. Cothem*, 127 *S. W.* 260.

The term of office is four years; this being a constitutional provision it is beyond legislative change. It is a fixed quantity." State ex rel Goodin v. Thoman, 10 Kan. 191, cited in 74 Neb. 188, 104 N.W. 197, p. 202. *Wilson v. Shaw*, 188 *N.W.* 940.

Where a city has been reincorporated, but its name, identity, and territorial limits remain the same, a justice of the peace cannot be legislated out of office by the new charter's provision reducing the number of justices, when the Constitution provides that a justice shall hold his office for four years and until his successor is elected and qualified. *Gratopp v. Van Eps* (1897) 113 *Mich.* 590, 71 *N.W.* 1080.

All the authorities above quoted show conclusively that as long as a court exists the office of the judge also exists. And this is so because a court cannot be established without clothing it with jurisdiction, which is the office of the judge. That is why it was said that a court cannot exist without jurisdiction and judge. And that if the court is stripped of its jurisdiction and the judge is taken away, the court will be a nonentity.

Before proceeding to discuss the third proposition that we set forth in this memorandum (page 41), shall answer the arguments which the Solicitor General advanced in his reply and at the hearing of this case.

As to the argument that the action of the petitioners is predicated on the fact that they were not appointed district judges.

The Solicitor General has been harping that "if petitioners were appointed to the *new district courts*, this petition would never have been filed". (p. 20, Answer). Certainly, had the petitioners continued as judges of the Courts of First Instance, under the name of district judges, they would not have filed this action. Why? Because of the elementary rule that one who has not sustained any injury as a result of the enforcement of a law cannot impugn the validity of the same. (People vs. Vera, 65 Phil. 56). May we remind the learned counsel for the respondents that Republic Act No. 1186 has not created any new district courts?

As to the argument that the Supreme Court cannot inquire as to the intent and purpose of the Congress in providing in the Act the abolition of the position of judges-at-large and cadastral judges.

The Solicitor General predicated this proposition on the principle of separation of powers. But it is the Solicitor General himself who advanced the theory that the purpose of the Act is to brush aside the obnoxious practice of *rigodon de jueces* which we deny. We contend that the real purpose of the Act is to legislate out the judges-at-large and cadastral judges and in support of our contention we have cited the speech of the Majority Floor Leader of the House, who was one of the authors and sponsors of the bill, in which he publicly acknowledged that the main purpose of the bill is to weed out undesirable judges.

Mr. Cooley, in his work on Constitutional Limitations (2d Ed., p. 65), says: "When the inquiry is directed to ascertaining the mischief designated to be remedied or the purpose sought to be accomplished by a particular provision, it may be proper to examine the proceedings of the convention which framed the instrument. Where the proceedings clearly point out the purpose of the provision, the aid will be valuable and satisfactory."

The Supreme Court has held that "courts can avail themselves of the actual proceedings of the legislative body to assist in the construction of a statute of doubtful import." (Palanca vs. City of Manila, 41 Phil. 125).

Section 3 of Republic Act No. 1186 is of doubtful import be-

cause it provides that the position of judges-at-large and cadastral judges are abolished but the Act itself did not abolish any of the Courts of First Instance, the exercise of jurisdiction of which was vested by the Constitution and the Judiciary Act of 1948 in the judges of First Instance who are the district judges, judges-at-large and cadastral judges. We repeat: the power to try and decide civil and criminal cases as prescribed in the Judiciary Act of 1948 constitutes the office of these judges and when they exercise such jurisdiction, they discharge the functions of their office.

As to the argument that the law providing that Judges-at-Large and Cadastral Judges may be designated by the Secretary of Justice to any district or province to hold court is unconstitutional.

It is contended by the Solicitor General that such a provision of law is unconstitutional because it violates Article VIII, Section 7, of the Constitution, which provides: "No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court." This proposition is advanced to justify the abolition of the positions of Judges-at-Large and Cadastral Judges. It is not difficult to see how fallacious this argument is.

Since 1914 we have had judges without permanent stations. They were called "Auxiliary Judges" of Courts of First Instance and, at first, numbered seven. (See Act No. 2347, Section 4). In 1916 the Administrative Code was passed and the provision regarding the positions of seven Auxiliary Judges of First Instance was maintained (Act No. 2657, Section 152). On March 10, 1917, the Revised Administrative Code (Act No. 2711) was passed, and provided:

> "Sec. 157. *Judges-at-Large.*—In addition to the judges mentioned in section one hundred and fifty-four hereof, as amended, there shall also be appointed five judges who shall not be assigned permanently to any judicial district and who shall render duty in such districts, or provinces as may, from time to time, be designated by the Department Head."

On March 17, 1923, Act No. 3107, amending Section 157 of the Revised Administrative Code, was passed, increasing the number of Auxiliary Judges from seven to fifteen. On March 1, 1933, Act No. 4007 was approved, amending the Revised Administrative Code without touching the provision regarding Auxiliary Judges. The Constitution was approved by the Constitutional Convention on February 8, 1935.

As may be seen, at the time of the drafting of the Constitution, there had already been in this country for many years before, judges with permanent stations called "Judges of First Instance" and judges-at-large known as "Auxiliary Judges." The constitutional Convention did not consider obnoxious the existence of Judges-at-Large who could be transferred from one province to another, upon the direction of the Secretary of Justice, to try cases. What the Constitutional Convention considered obnoxious was the transfer from one province to another of Judges of First Instance with permanent stations, that is, the District Judges. And in order to stop such practice, which was then known as *rigodon de jueces*, it provided in the Constitution that "no judge appointed for a *particular district* (that is, District Judge) shall be designated or transferred to another district without the approval of the Supreme Court." It is evident, therefore, that this provision of the Constitution refers to District Judges or judges appointed for particular districts. How, then, can the Solicitor General seriously contend that the provision of the Judiciary Act of 1948 regarding Judges-at-Large and Cadastral Judges, who can be transferred from one province to another by the Secretary of Justice in the public interest, is violative of Article VIII, Section 7, of the Constitution?

There may be instances when it becomes necessary for the court to indulge in presumptions in order to know what the members of the Constitutional Convention had in mind when they drafted a particular provision of the Constitution. Thus, in the Krivenko case, the Court said:

> "At the time the Constitution was adopted, lands of the public domain were classified in our laws and jurisprudence into agricultural, mineral, and timber, and that the term 'public agricultural lands' was construed as referring to those lands that were not timber or mineral, and as including residential lands. It may safely be presumed, therefore, that what the members of the Constitutional Convention had in mind when they drafted the Constitution was this well-known classification and its technical meaning then prevailing." (Krivenko v. Register of Deeds, City of Manila, G.R. No. L-630, Vol. 12, Lawyer's Journal, p. 577.)

In the present case we need not presume, as in the aforecited case of Krivenko, what the Constitutional Convention had in mind, when it drafted Section 7 of Article VIII because the text itself of the provision makes direct and exclusive reference to "judges appointed for a particular district," who are named by the Revised Administrative Code of 1917 as "District Judges."

As to the provision in the Act converting the Judges-at-Large and Cadastral Judges to District Judges would constitute a legislative appointment.

Secretary of Justice Tuason expressed the opinion at the hearing on House Bill No. 1960 that there should be a proviso in the Act that the actual Judges-at-Large and Cadastral Judges should continue as district judges.

> "MR. VELOSO (I). But suppose the bill as now proposed intends to abolish the judges-at-large and cadastral judges, would you think that this bill is unconstitutional?
>
> SEC. TUASON. Well, that is why I say, — in order to prevent the bill from being unconstitutional, the abolition must contain the proviso that these judges are not to be ousted, they are not to be re-appointed but they are to continue as district judges and their districts are to be determined by somebody or by the Department of Justice." (*Transcript of hearing on March* 17, 1954 *of the Committee on Judiciary, House of Representatives.*)

Now comes the Solicitor General saying that his Chief (Art. 83, Revised Administrative Code) is wrong, because such a provision would constitute legislative appointment and therefore unconstitutional. He is seconded by our so-called constitutionalists. We sincerely believe, however, that the Secretary of Justice was right. Let us see the argument of the Solicitor General. "Had the Congress inserted in Republic Act No. 1186 a provision that the judges-at-large and cadastral judges will continue as district judges, that would constitute a legislative appointment which would be unconstitutional because it is the exclusive prerogative of the Executive to make appointments." He cites the case of Springer v. Government of the Philippine Islands, 277 U.S. 189.

We submit that the ruling in said case does not argue against the opinion of the Secretary of Justice. In said case the validity of a law creating a voting committee or board composed of the Governor-General, the Senate President, and the Speaker of the House of Representatives was questioned. The function of the committee was to exercise the voting power of the Philippine Government as owner of some of the shares in certain business corporations. The Supreme Court held that the law was invalid, because it not only created a committee, which was an office, but also filled it. The specification of the persons to constitute the board was in fact a legislative appointment.

In the case at bar the Act in question does not create a new office. This is so because said Act did not establish any new dis-

trict nor create new Courts of First Instance. Had the Act established new judicial districts and new Courts of First Instance, then we can say that the Act has created new judicial offices for which the judges who will discharge the judicial functions in said Courts must be appointed. But, we repeat, the Act did not create any new judicial office for, are not the Courts of First Instance created under the Judiciary Act of 1948 and to exercise the jurisdiction of which the petitioners were appointed, the same Courts of First Instance now existing under Republic Act No. 1186? Would the Solicitor General say that the present Courts of First Instance are not the same Courts of First Instance created by the Judiciary Act of 1948 and in which the petitioner-judges were exercising their judicial functions?

Since they are the same Courts of First Instance and the jurisdiction that the petitioners would exercise, if they were made district judges, is the same, no new appointments will be necessary, as held in several cases, among which are the following:

(1) State v. Manrey, 16 S.W. (2d) 809.

(2) State v. Caldwell, 23 So. (2d) 855.

(3) Amos v. Mathews (State ex rel. Davis, v. Carlton), 99 Fla. 1, 126 So. 308.

(4) Singleton v. Knott, 101 Fla. 1077, 138 So. 71.

(5) Whitaker v. Parson, 86 So. 247.

(6) Shoemaker vs. United States, 147 U.S. 282, 37 Law. Ed., 170.

State v. Manrey, 16 *S.W.* (2d) 809.

In 1924 respondent Judge Manrey was elected to the office of Judge of the 9th Judicial District of Texas for a term of four years, that being the term fixed by the Constitution. When Judge Manrey was elected in 1924 the said 9th judicial district was composed of the counties of Hardin, Liberty, Montgomery, San Jacinto and Polk, and the 75th Judicial District was then composed of the counties of Hardin, Chambers, Montgomery, Liberty and Tyler. In 1925 the Legislature of Texas enacted a statute reorganizing the 75th, 9th and 80th judicial districts.

By Section 1 of said Act the 9th judicial district was reorganized so as to be composed of the counties of Polk, San Jacinto. Montgomery and Waller.

By Section 2 of said Act the 75th district is reorganized so as to be composed of the counties of Hardin, Liberty, Tyler and Chambers.

By Section 3 of the Act the 80th district is left as it already was, except that Waller County was removed from the 80th district. It was traced, by Section 1, in the 9th district.

Thus it will be seen that by the terms of the new Act the territory of the 9th district was changed by taking two counties, Hardin and Liberty, out of it, and by adding one county thereto, Waller. The territory of the 75th district was changed by taking one county, Montgomery, out of it, and no counties were added. The only change made in the territory of the 80th district was that Waller county was removed therefrom. Section 5 of said act reads as follows:

"The present judges of the Ninth and Seventy-Fifth Judicial Districts as the same now exists, shall remain the district judges of their respective districts as reorganized under the provisions of this Act, and shall hold their offices until the next general election and until their successors are appointed or elected and duly qualified, and they shall receive the same compensation as is now, or may hereafter be provided by law for district judges, and a vacancy in either of said offices shall be filled as is now, or may hereafter be provided by law, and the present judge of the district court for the Eightieth Judicial district shall hold his office until his term expires and until his successor is elected and qualified, and a judge of said court shall hereafter be elected at the time and in the manner provided by law by the qualified voters of Harris County."

It appears that, notwithstanding the fact that Judge Manrey had been elected in 1924 for a full four-year term as Judge of the 9th judicial district, he again announced himself a candidate for said office in 1926, on account of the provisions of Section 5, *supra*, which provides that the judge of the 9th district shall hold his office until the next general election, etc., and caused his name to be placed on the official ballot, and received the highest number of votes at the 1926 general election for said office.

It appears also that in 1928 Judge Manrey and Judge McCall were both candidates for the Democratic nomination for said office at the general primary election of the Democratic Party in 1928, and Judge McCall received the highest number of votes and was declared the Democratic nominee. No contest of this election was had, and Judge McCall's name was printed on the official ballot of the November, 1928, general election as a Democratic candidate, and he received the highest number of votes cast in said general election for said office.

On November 6, 1928 Judge Manrey filed a suit against Judge McCall, claiming that Judge McCall was not entitled to receive a commission to the 9th Judicial District. The question raised was whether the Legislature in creating new judicial districts may appoint judges of previously existing districts to act until appointments of successors at next general election.

HELD:

We have carefully read and examined the act of the 39th Legislature in question, being chapter 166, General Laws of said Legislature, p. 378. An examination of said act as a whole, including the caption, the body of the act, and the emergency clause, shows clearly that the Legislature did not create any new judicial districts in said act. The act is just exactly what its caption shows it to be—an act to reorganize, not to abolish, said districts, by doing the things shown in the act. If the act operates so as to create a new district, then it created a new office, and the part of section 5 thereof which attempted to appoint Judge Manrey as judge thereof by legislative action was null and void, as it is not a legislative power to appoint district judges. Such is an executive power and is so expressly by the plain terms of our Constitution. State v. Gillette's Estate (Tex. Com. App.) 10 S.W. (2d) 984; State v. Valentine (Tex. Civ. App.) 198 S.W. 1006 (writ ref.). However, as above stated, we do not think that the act created new districts at all, but merely reorganized the old districts.

It is provided by section 7 of article 5 of the Texas state Constitution that:

"The state shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a general election, a judge, who shall be a citizen... who shall hold his office for a period of four years...."

If the Legislature created no new district, and did not abolish the Ninth district then it follows that Judge Manrey having been elected judge of the Ninth district in November, 1924 at the general election of that year, for a four-year term, was entitled to such full four-year term under the Constitution and that the part of section 5 of the act of 1925 which attempted to shorten the term and cause a new election in 1926 for such office was in plain violation of the express provision of our Constitution above quoted and is null and void. However, this does not affect the validity of the balance of the act.

It follows from what we have said that there is no doubt under the Constitution and laws of this state Judge Manrey

was duly and constitutionally elected judge of said Ninth district in 1924 for a full four-year term, and that, said district not having been abolished, he was entitled to serve out said full term.

State v. Caldwell, 23 *So.* (2d) 855.

The Legislature of 1945 of the State of Florida enacted Chapter 22821 creating the "Florida State Improvement Commission," hereafter called the "Commission," and defining its powers and duties. On petition of the Attorney General *quo warranto* was directed to respondents as members of the Commission, commanding them to show cause why they should not be ousted from office and enjoining them from further exercising the duties imposed on them as such. It is contended that Chapter 22821 is void and unconstitutional because it designates the chairman of the State Road Department as a member of the Commission and in so doing trenches on the power of the Governor to appoint and suspend officers for designated causes, contrary to Section 27, Article III, of the Constitution.

"This question is answered contrary to the contention of relator in Whitaker v. Parsons, 80 Fla. 352, 86 So. 247, Amos v. Mathews (State ex rel. Davis v. Carlton), 99 Fla. 1, 126 So. 308, and Singleton v. Knott, 101 Fla. 1077, 138 So. 71, the gist of the holding in all these cases being that State and County offices may be created and the duties of the holders defined by statute or the Constitution. These cases are also authority for the doctrine that the legislature may impose additional powers and duties on both constitutional and statutory officers so long as such duties are not inconsistent with their duties imposed by the Constitution. This court has accordingly approved the rule that *the legislature may make an existing officer the member of another and different board by enlarging his duties.* If the chairman of the Road Department should be suspended as such, he would likewise be suspended as a member of the Commission."

Whitaker v. Parsons, 86 *So.* 247.

HELD: The Legislature, having all the law-making power of the state that is not withheld by the Constitution, may prescribe duties to be performed by officers expressly provided for by the Constitution, in addition to the duties of those officers that are defined in the Constitution, where not forbidden by the organic law; and the Constitution does not withhold from the Legislature the power to prescribe additional duties to be performed by the state treasurer, or others of "the administrative officers of the executive department," that are not inconsistent with their duties as defined by the Constitution; and such duties may be to act as members of boards or commissions in conjunction with other officers who are provided for by statute—the commissions issued to constitutional officers being sufficient to cover any duties imposed upon them by law. In such cases the incumbent does not "hold or perform the functions of more than one office under the government of this state at the same time," within the meaning and purpose of that quoted provision of the Constitution. ...

In providing (section 1, c. 7345, Acts of 1917) that "there is hereby created and established a board to be known and designated as the state live stock sanitary board, which shall be composed of the commissioner of agriculture, the superintendent of public instruction, the state treasurer, and two other members who shall be appointed by the Governor," the statute merely authorizes the appointment of two officers by the Governor, and imposes duties upon the three state officers who, with the two officers appointed, constitute the state board, with designated duties. This does not create new offices for the three state officials. It adds new administrative duties to existing administrative offices. The duties imposed are not inconsistent with the duties defined in the Constitution.

...when a statute provides that stated officers shall constitute a board with administrative functions, no new offices are thereby created, but new duties are imposed upon officers already in commission. ...

Shoemaker vs. United States,
147 *U.S.* 282, 37 *Law. Ed.* 170.

There are several features that are pointed to as invalidating the Act. The first is found in the provision appointing two members of the park commission, and the argument is, that while Congress may create an office, it cannot appoint the officer; that the officer can only be appointed by the President with approval of the Senate; and that the Act itself defines these park commissioners to be public officers, because it prescribes that three of them are to be civilians, to be nominated by the President and confirmed by the Senate. This, it is said, is equivalent to a declaration by Congress that the three so sent to the Senate are "officers," because the Constitution provides only for the nomination of "officers" to be sent to the Senate for confirmation; and that it hence follows that the other two are likewise "officers," whose appointment should have been made by the President and confirmed by the Senate.

HELD:

As the two persons whose eligibility is questioned were at the time of the passage of the Act and of their action under it officers of the United States who had been therefore appointed by the President and confirmed by the Senate, we do not think that, because additional duties, germane to the offices already held by them, were devolved upon them by the Act, it was necessary that they should be again appointed by the President and confirmed by the Senate. It cannot be doubted, and it has frequently been the case, that Congress may increase the power and duties of an existing office without thereby rendering it necessary that the incumbent should be again nominated and appointed.

As to whether the Legislature has the power to increase or diminish the number of Justices of the Supreme Court.

During the oral argument one of the Justices propounded the following question to the Solicitor General: If the Legislature can abolish the positions of Judges-at-Large and Cadastral Judges, don't you think that it can also increase or reduce the number of Justices of the Supreme Court at its pleasure? The answer of the Solicitor General, if we remember well, is that the legislature cannot do that because the members of the Supreme Court are constitutional officers. We do not agree to this. Article VIII, Section 40, of the Constitution reads as follows: "The Supreme Court shall be composed of a Chief Justice and ten Associate Justices and may either sit *in banc* or in two divisions unless otherwise provided by law." The undersigned, who was then the Chairman of the Committee on Judiciary of the Constitutional Convention, explained that the words "unless otherwise provided by law" referred to the number of Justices to compose the Supreme Court as well as their sitting *in banc* or in two divisions. This appears in the record of the Constitutional Convention.

We take this occasion to explain why this is so. During the proceedings in the Constitutional Convention, the Supreme Court was interested in the creation of the Court of Appeals in order to remove the congestion of cases in the Supreme Court, for according to the Justices, such situation would always exist unless an intermediate appellate court was created. The Chief Justice secured a commitment from President Quezon that such court would be created in the Constitution. However, the plan of the Chairman of the Committee on Judiciary was to increase the number of the members of the Supreme Court to twenty-four, dividing it into civil and criminal divisions like the Supreme Court of Spain. So he was opposed to the creation of the Court of Appeals. President Quezon then invited the members of the judiciary to a conference in his

house. In the conference there were present on the part of the Constitutional Convention its President, Delegate Recto, Delegate Briones, and the Chairman of the Committee on Judiciary. On the part of the Supreme Court were present Justices Avanceña, Imperial and Abad Santos. President Quezon asked the Chairman his reasons for opposing the creation of the Court of Appeals. After expressing his reasons, and the justices having likewise given theirs, President Quezon decided to leave the question entirely in the hands of the Convention. The Convention rejected the creation of the Court of Appeals, leaving to the discretion of the Legislature the creation of the same. The reason advanced was that, since the Court of Appeals was to be established for the first time in this country by way of experiment, the same must be created by the Legislature so that in case the experiment fails, the Court of Appeals may be abolished by law and the congestion of cases in the Supreme Court may be remedied by increasing the number of its Justices. Such is the history of the provision of the Constitution that unless otherwise provided by law, the Supreme Court shall be composed of a Chief Justice and ten Associate Justices.

Now we come to the question propounded to the Solicitor General. If the provisions of Republic Act No. 1186 abolishing Judges-at-Large and Cadastral Judges is constitutional, then the Legislature may at any time decrease the number of Justices from eleven to seven and add four more Justices to the Court of Appeals, or may increase the number of Justices of the Supreme Court to sixteen, for example, and later on abolish the positions of the additional justices as it pleases. In other words, the position of the members of the judiciary, from the Justices of the Supreme Court down to the Justices of Peace, will be at the mercy of the Legislature. We repeat in this connection what Chief Justice Snodgrass said:

> "It is no argument in answer to this to say that the Legislature will not do this. It is not a question of what they will do that we are now considering; it is a question of constitutional power, of what it can. The question as to how such power is granted, or what restraint imposed, cannot be determined on the probability or improbability of its exercise."

—III—

TO AVOID HOLDING SECTION 53 OF SAID ACT UNCONSTITUTIONAL ON THE GROUND THAT IT INFRINGES THE CONSTITUTIONAL PROVISION GUARANTEEING THE TENURE OF JUDICIAL OFFICE, THIS COURT MAY DECLARE THAT SAID ACT OPERATES PROSPECTIVELY.

This proposition is discussed in the Memorandum of Attorney Salazar.

—IV—

IF THIS COURT WILL DECLARE THAT REPUBLIC ACT NO. 1186 HAS ABOLISHED THE OFFICE OF THE PETITIONERS AND HAS TERMINATED THEIR TERMS OF OFFICE, AND WILL FURTHER DECLARE THAT SAID ACT IS CONSTITUTIONAL, THEN THE CONSTITUTIONAL PROVISION GUARANTEEING THE TENURE OF JUDICIAL OFFICE WOULD BE A MYTH AND NO MEMBER OF THE JUDICIARY, FROM THE JUSTICES OF THE SUPREME COURT TO THE JUDGES OF THE JUSTICE OF THE PEACE COURTS, WOULD BE SECURE IN THEIR OFFICE WHICH, IN THE LAST ANALYSIS, WOULD BE AT THE MERCY OF THE CONGRESS.

This proposition is discussed in the Memorandum of Attorney Sebastian.

CONCLUSION

It cannot be gainsaid that the removal of the judges by the Congress has considerably affected the prestige of the judiciary. No political party has ever remained—or can hope to remain—in power forever. After some future general election, another political party which will succeed the party in power may do what the present party has done, that is, eliminate judges of the past administration and place in their stead new judges belonging to the winning party. It is the general belief that the elimination of some judges by the present Congress was motivated by political expediency and this impression is bolstered by what appeared in the newspapers in connection with the appointment of the new judges. Take, for instance, what appeared in the *Manila Times* of July 28, 1954 (page 5, column 5). It reads:

> "A number of appointments in the judiciary will be opposed by commission members, especially those from the House who had vigorously protested the appointments on the ground that they had not been consulted, and that such appointments failed to conform with a principle laid down by the party regarding party loyalty."

The *Evening News* of July 24, 1954, page 23, first column, carries the following under the heading of "8 Judges Bypassed":

> "The Judiciary committee of the commission on appointments today decided to bypass the appointments of eight district judges named by President Magsaysay on the ground that their qualifications do not conform with the new standards agreed upon in a Malacañang caucus.
>
> "This was disclosed by Senate Majority Floor-leader Cipriano P. Primicias who admitted that one of the criteria for judges set forth at the Palace meeting was loyalty to the Nacionalista party.
>
> "Primicias would not divulge the names of the eight judges 'for obvious reasons'."

This corroborates to some extent the observations made by Senator Paredes in his speech during the deliberations of Senate Bill No. 170, pertinent parts of which are reproduced hereunder.

> "Senator Laurel, as a member of the Supreme Court, has laid the rule that should be followed, and I believe it is only proper to bring his ruling before the attention of this Senate. In the celebrated case of Zandueta cited here this morning, it was held by Justice Laurel that a reorganization that deprives a judge of his office is not necessarily unconstitutional. But any reorganization may become unconstitutional if the circumstances are such as to show that the intention of the reorganization is to put out a member of the judiciary by legislation. I will not charge anybody with any hidden intention or improper motives in this bill, but if the question is ever presented to the Supreme Court by any judge who may be affected by the provisions of this bill which I suppose will be approved this afternoon, I feel, Mr. President, that if the circumstances — preceding, coetaneous and subsequent to the approval of the bill—are presented to the Supreme Court, the constitutionality of the bill will be seriously endangered. If the motives of the Congress in reorganizing are simply public policy, public welfare, public service, and the prestige or the protection of the judiciary and the members thereof, there can be little question about the constitutionality of the bill, but otherwise, the bill is unconstitutional.
>
> "Let us now, Mr. President, examine the circumstances attending this reorganization, and then ask ourselves whether or not our protestations of good motives are likely to be given credence by the courts. For the last seven years, the administration was controlled by the Liberal Party. The Nacionalista Party being then in the minority, had always been complaining against the acts of the Liberal Party administration. Right or wrong, there were alleged irregularities committed and which were the subject of attacks and complaints on the part of the members of the minority party, then the Nacionalista Party. The Judiciary was not free from these attacks and from these charges of irregularities. The Judiciary was also accused of having become a tool of the Chief Executive in the dispensation of justice. Comments were made, attacks were freely hurled during the campaigns against members of the Judiciary or the way in which the members of the Judiciary performed their duties. Main subject of attacks was the frequency with which the Secretary of Justice assigned judges to try specific cases

and attributing to this action the ulterior motive of securing the conviction or the acquittal of the accused in criminal cases. Since the elections and after the new administration was installed into office, what did we notice in the matter of changing employees and reorganizing? In the Executive Department, not only have the high officials had to present their resignation out of propriety, but even those who were holding technical positions and who ordinarily would not be affected by changes in the leadership of the government, had to resign, and I say "had to" because they were asked to resign, or else.... So they did resign one by one. They quit their positions, because they were asked to.

"And that was not enough. In the provinces changes were made. I will not now say that legislative violations were made, changes were made in the Executive Department, governors, mayors, councilors, board members were changed from Liberals to Nacionalista. There seems to be a craze of changing personnel, ousting all the Liberals, all those who belong to the Liberal party, and putting in their places members of the Nacionalista Party. Very natural, that was to be expected. For so many years has the Nacionalista Party been deprived of the opportunity to control the government, and this being the first opportunity of the Nacionalistas, it is only natural that they should wish to place their own men in order to be able to carry out their promises. They did not have confidence in the members of the Liberal Party. It was their right and privilege and duty to themselves, I should say, to bring new men to carry out their policies.

"Mr. President, this was done, not only in the executive and also the elective positions. In the Department of Foreign Affairs, soon after the assumption to office, the Secretary announced publicly and openly that all the members of the Department of Foreign Affairs should resign notwithstanding the fact that there is a law protecting them, the tenure of their office being assured on good behavior. Then investigations against members of the Foreign Service started, all with the end in view of removing incumbent Liberals.

"The same was done in the bureaus. Chief of Bureaus were asked to resign. Some of them did, others did not, but finally had to give up their place in favor of new ones, all belonging to the Nacionalista Party. This series of similar acts following the same standard will help discover the intention of this judiciary reorganization bill.

"As to the Judiciary, there is no way of laying off the judges. The judges cannot be asked simply to resign because the Constitution protects them. There is a need to follow a different course if we want to change those who, during the former regime or administration, were suspected to being a tool of the Executive. A reorganization to get rid of them would be a most convenient course.

x x x x x x

"If I may resume now, in the judiciary, there is an absolute impossibility of asking any body to resign if he does not want to, because he is protected by the Constitution. That will be presented to the Supreme Court. Now, as for other coetaneous circumstances. What was done in the matter of the appropriation law in order to facilitate legislating out some of the employees, civil service men? Lump sum appropriations were requested for certain offices, but which were not granted by the Senate because the Senate, I am proud to say, represented by the distinguished gentlemen of the majority and also joined by a few members of the minority, saw fit to oppose that objectionable move, or at least saw fit to act in such a way as to avoid any posibility of suspicion. But other facts will also be brought up, Mr. President, which will add to the series of circumstances that will be used by those who may question the law, to change the Senate with ulterior motives. What are those facts, Mr. President? I was told right this afternoon, when I was on the floor of the Lower House, that no less than the floor leader of the majority stated that one of the purposes of the bill is to get rid of the judges that are no good. This is on record. With such a confession, **how can we say to the** Supreme Court, in all sincerity, that **our intentions are purely** to serve the judiciary. The Secretary of Justice is even quoted as having said that five or six judges will be affected. Take those circumstances into consideration, Mr. President, and again the other side will say, "What was the purpose of the reorganization, the evident purpose of the reorganization?" It has been said, *first*, to equalize, give the same rank, jurisdiction and salary to all judges. The same rank can be accomplished now if we only raise the salary of the lower judges. The cadastral judge will have the same jurisdiction as the district judge if he is assigned to try all kinds of cases. By administrative order, he can have the same rank, although not the same salary and the same name. The auxiliary judges now have the same privileges as a district judge except the salary. If that is the reason for the bill, why not simply raise the salary of these judges so that they may have the same rank as the others. *Second alleged motive*: To avoid the possibility of these judges being used and assigned from one district to another as they had allegedly been used and assigned in the past, to try special cases and to follow the wishes of the administration. I wish to pay a tribute of admiration to the gentlemen of the majority for having said that that is their purpose. I believed that is the purpose of the gentlemen who authored the bill and sponsored the bill, Senator Laurel. But, Mr. President, that same purpose can be accomplished by simply amending the law, by simply providing that the Secretary of Justice shall not do this hereafter without the consent of the affected judge and the Supreme Court. That would have been a remedy. So, we cannot allege that as the reason for the amendment. Now, what is the other possible and alleged reason? To give all judges the same name. Mr. President, I believe this is too childish a reason for a wholesale reorganization of the judiciary.

"These being the circumstances, I would ask the gentlemen of the Senate to kindly consider whether our protestation of clean conscience and clear motives are not outbalanced by the preceding and coetaneous circumstances, and whether or not, if we approve this bill we will have any chance of having it sustained by the Supreme Court.

It is only the Supreme Court which can restore the prestige of our courts and make the people realize that under our republican form of government the independence of our judiciary can never be destroyed or impaired. The Legislature, though possessing a larger share of power, no more represents the sovereignty of the people than either the executive or the judicial department. The judiciary derives its authority from the same high source as the Executive and the Legislature. The framers of our Constitution have incorporated therein certain permanent and eternal principles, and erected an independent judiciary as "the depository and interpreter, the guardian and the priest of the articles of freedom." It has been said that of all the contrivances of human wisdom, this invention of an independent judiciary affords the surest guarantee and the amplest safeguard to personal liberty and the rights of individuals.

We, therefore, pray that, for the sanctity of the Constitution, the paramount interest of our people, and the independence of the judiciary, this Honorable Court declare: (1) that Section 3 of Republic Act No. 1186 is unconstitutional insofar as it legislates out the petitioners-judges, and (2) that the petitioners are entitled to continue exercising their judicial functions in the Courts of First Instance of the Philippines in accordance with the Judiciary Act of 1948.

Manila, Philippines, August 21, 1954.

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