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Sergio Osmeña, Jr., Petitioner vs. Salipada K. Pendatun, et al., in their capacity as members of the Special Committee created by House Resolution No. 59, Respondents, G.R. No. L-17144, October 28, 1960, Bengzon, J.

1. CONSTITUTIONAL LAW; PARLIAMENTARY IMMUNITY; SECTION 15, ARTICLE VI OF CONSTITUTION CONSTRUED. — The provision of Section 15, Article VI of the Philippine Constitution which provides that "for any speech or debate" in Congress, the Senators or members of the House of Representatives "shall not be questioned in any other place" which provision is a copy of Sec. 6, Clause I of Art. 1 of the Constitution of the United States, has been understood in the United States to mean that although exempt from prosecution or civil actions for their words uttered in Congress, the Members of Congress may, nevertheless, be questioned in Congress itself.

2. ID.; ID. — Parliamentary immunity guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum outside the Congressional Hall but it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof.

3. ID.; ID. EXTENT OF PUNISHMENT OF MEMBERS OF CONGRESS FOR UNPARLIAMENTARY CONDUCT. — Members of Congress could be censured, committed to prison, suspended or even expelled by the votes of their colleagues for unparliamentary conduct.

4. ID.; PARLIAMENTARY RULES MAY BE DISREGARDED BY LEGISLATIVE BODY. — Parliamentary rules are merely procedural and may be disregarded by the legislative body and, therefore, failure to conform to said rules will not invalidate the action of a deliberative body when the requisite number of members have agreed to a particular measure.

5. ID.; DISORDERLY BEHAVIOR; CONGRESS THE BEST JUDGE OF WHAT CONSTITUTES DISORDERLY BEHAVIOR. — In the case at bar, the House of Representatives is the judge of what constitutes disorderly behavior, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on factual circumstances of which the House knows best but which cannot be depicted in black and white for presentation to and adjudication by the Courts.

6. ID.; POWER OF LEGISLATIVE BODY TO EXPEL A MEMBER. — Every legislative body in which is vested the general legislative power of the state has the implied power to expel a member for any cause it may deem sufficient, even in the absence of an express provision expressly conferring said power.

7. ID.; ID. — The power of the legislative body to expel a member thereof is inherent and courts are forbidden to direct or control said body in the exercise of said power.

REYES, J.B.L., *J., dissenting*:

8. ID.; EX POST FACTO LEGISLATION; VALIDITY OF RESOLUTIONS NOS. 59 and 175. — In the case at bar, petitioner had delivered his speech and before the House adopted, fifteen days later, Resolution No. 59, the House had acted on other matters and debated them and, therefore, petitioner had ceased to be answerable for the words uttered by him in his privilege speech. Resolution No. 59, insofar as it attempts to divest him of his immunity so acquired and subject him to discipline and punishment, when he was previously not so subject, violates the constitutional inhibition against *ex post facto* legislations and Resolutions Nos. 59 and 175 are legally obnoxious and invalid.

9. ID.; EX POST FACTO LAW. — The rule is well established that a law which deprives an accused person of any substantial right or immunity possessed by him before its passage is *ex post facto* as to prior offenses.

10. ID.; LIMITATION ON THE RIGHT OF THE HOUSE OF REPRESENTATIVES TO AMEND ITS RULES. — The rights of the House to amend its rules does not carry with it the right to retroactively divest its members thereof of an immunity he had already acquired. The Bill of Rights is against it.

11. ID.; SUSPENSION OF PRIVILEGES VIOLATIVE OF CONSTITUTIONAL PROVISION AGAINST EX POST FACTO LEGISLATION. — In the case at bar, while petitioner was only meted out a suspension of privileges, that suspension is as much a penalty as imprisonment or a fine, which punitive action is violative of the spirit if not of the letter, of the constitutional provision against *ex post facto* legislation.

12. ID.; PURPOSE OF IMMUNITY PROVIDED BY THE HOUSE RULES. — The plain purpose of the immunity provided by the House Rules is to protect the freedom of action of its members and to relieve them from the fear of disciplinary action taken upon second thought, as a result of political convenience, vindictiveness or pressures.

13. ID.; POWER OF SUPREME COURT TO DECLARE UNCONSTITUTIONAL THE QUESTIONED RESOLUTIONS. — In the case at bar, the fact that the Supreme Court possesses no power to direct or compel the Legislature to act in any special manner, should not deter it from recognizing and declaring the unconstitutionality and nullity of the questioned resolutions and all actions taken in pursuance thereof.

LABRADOR, A., J., *dissenting*:

14. ID.; RULE LIMITING PERIOD FOR IMPOSITION OF PENALTY FOR A SPEECH TO THE DAY IT WAS MADE NOT MERELY A RULE OF PROCEDURE. —The rule limiting the period for imposition of a penalty for a speech to the day it was made, is not merely a rule of procedure but a limitation of the time in which the House may take punitive action against an offending member. In reference to time, it is a limitation on the liability to punishment.

15. ID.; DUTY OF SUPREME COURT TO PRONOUNCE WHAT THE LAW IS. — The Supreme Court should not interfere with the legislature in the manner it performs its functions, but it can not abandon its duty to pronounce what the law is when it is invoked by the members of Congress or any humble citizen.

DECISION

On July 14, 1960, Congressman Sergio Osmeña, Jr., submitted to this Court a verified petition for "declaratory relief, certiorari and prohibition with preliminary injunction" against Congressman Salipada K. Pendatun and fourteen other congressmen in their capacity as members of the Special Committee created by House Resolution No. 59. He asked for annulment of such Resolution on the ground of infringement of his parliamentary immunity; he also asked, principally, that said members of the special committee be enjoined from proceeding in accordance

with it, particularly the portion authorizing them to require him to substantiate his charges agains the President, with the admonition that if he failed to do so, he must show cause why the House should not punish him.

The petition attached a copy of House Resolution No. 59, the pertinent portion of which read as follows:

> "WHEREAS, on the 23rd day of June, 1960, the Honorable Sergio Osmeña, Jr., Member of the House of Representatives from the Second District of the province of Cebu, took the floor of this Chamber on the one hour privilege to deliver a speech, entitled "A Message to Garcia";
>
> WHEREAS, in the course of said speech, the Congressman from the Second District of Cebu stated the following:
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> x x x x
>
> "The people, Mr. President, have been hearing of ugly reports that under your unpopular administration the free things they used to get from the government are now for sale at premium prices. They say that even pardons are for sale, and that regardless of the gravity and seriousness of a criminal case, the culprit can always be bailed out forever from jail as long as he can come across with a handsome dole. I am afraid, such an anomalous situation would reflect badly on the kind of justice that your administration is dispensing. x x x x
> District of Cebu, if made maliciously or recklessly and without basis in truth and in fact, would constitute a serious assault
>
> WHEREAS, the charges of the gentleman from the Second upon the dignity and prestige of the Office of the President, which is the one visible symbol of the sovereignty of the Filipino people and would expose said office to contempt and disrepute: x x x x
>
> *Resolved by the House of Representatives*, that a special committee of fifteen Members to be appointed by the Speaker be and the same hereby is, created to investigate the truth of the charges against the President of the Philippines made by Honorable Sergio Osmeña, Jr., in his privilege speech of June 23, 1960, and for such purpose it is authorized to summon Honorable Sergio Osmeña Jr., to appear before it to substantiate his charges as well as to issue *subpoena* and/or *subpoena duces tecum* to require the attendance of witnesses and/or the production of pertinent papers before it, and if Honorable Sergio Osmeña Jr.. fails to do so to require him to show cause why he should not be punished by the House. The special committee shall submit to the House a report of its findings and recommendations before the adjournment of the present special session of the Congress of the Philippines."

In support of his request, Congressman Osmeña alleged: first, the Resolution violated his constitutional absolute parliamentary immunity for speeches delivered in the House; second, his words constituted no actionable conduct; and third, after his allegedly objectionable speech and words, the House took up other business, and Rule XVII, sec. 7 of the Rules of the House provides that if other business had intervened after the Member had uttered obnoxious words in debate, *he shall not be held* to answer therefor nor be subject to censure by the House.

Although some members of the court expressed doubts of petitioner's cause of action and the Court's jurisdiction, the majority decided to hear the matter further, and required respondents to answer, without issuing any preliminary injunction. Evidently aware of such circumstance with its implications, and presed for time in view of the imminent adjournment of the legislative session, the special committee continued to perform its task and after giving Congressman Osmeña a chance to defend himself, submitted its report on *July* 18, 1960, finding said congressman guilty of serious disorderly behaviour; and acting on such report, the House approved on the same day—before closing its sessions—House Resolution No. 175, declaring him guilty as recommended and suspending him from office for fifteen months.

Thereafter on July 19, 1960, the respondents (with the exception of Congressman De Pio, Abeleda, San Andres Ziga, Fernandez and Baltao[1] filed their answers, challenged the jurisdiction of this Court to entertain the petition, defended the power of Congress to discipline its members with suspension, upheld House Resolution No. 175 and then invited attention to the fact that Congress having ended its session on July 18, 1960, the Committee — whose members are the sole respondents—had thereby ceased to exist.

There is no question that Congressman Osmeña, in a privilege speech delivered before the House, made the serious imputations of bribery against the President which are quoted in Resolution No. 59, and that he refused to produce before the House Committee created for the purpose, evidence to substantiate such imputations. There is also no question that for having made the imputations and for failing to produce evidence in support thereof, he was, by resolution of the House, suspended from office for a period of fifteen months, for serious disorderly behaviour.

Resolution No. 175 states in part:

> "WHEREAS, the Special Committee created under and by virtue of Resolution No. 59, adopted on July 8, 1960, found Representative Sergio Osmeña, Jr., guilty of serious disorderly behaviour for making without basis in truth and in fact, scurrilous, malicious, reckless and irresponsible charges against the President of the Philippines in his privilege speech on June 23, 1960; and
>
> WHEREAS, the said charges are so vile in character that they affronted and degraded the dignity of the House of Representatives: Now, Therefore, be it
>
> RESOLVED by the House of Representatives, that Representative Sergio Osmeña Jr., be. as he hereby is, declared guilty of serious disorderly behaviour: and x x x x."

As previously stated Osmeña contended in his petition that: (1) the Constitution gave him complete parliamentary immunity, and so, for words spoken in the House, he ought not to be questioned: (2) that his speech constituted no disorderly behaviour for which he could be punished: and (3) supposing he could be questioned and disciplined therefore, the House had lost the power to do so because it had taken up other business before approving House Resolution No. 59. Now, he takes the additional position (4) that the House has no power, under the Constitution, to suspend one of its members.

Section 15 of Article VI of our Constitution provides that "for any speech or debate" in Congress, the Senators or Members of the House of Representatives "shall not be questioned in any other place." This section was taken or is a copy of sec. 6 clause 1 of Art. 1 of the Constitution of the United States. In that country, the provision has always been understood to mean that although exempt from prosecution or civil actions for their words uttered in Congress. the members of Congress may, nevertheless, be questioned *in Congress itself*. Observe that "they shall not be questioned in any *other* place" than Congress.

Furthermore, the Rules of the House which petitioner himself has invoked (Rule XVII, sec. 7), recognized the House's power to hold a member responsible "for words spoken in debate."

Our Constitution enshrines parliamentary immunity which is a fundamental privilege cherished in every legislative assembly of the democratic world. As old as the English Parliament, its purpose "is to enable and encourage a representative of the public to discharge his public trust with firmness and success" for it "is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense."[2] Such immunity has come to this country from the practices of Parliament as construed and applied by the Congress of the United States. Its extent and ap-

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(1) These, except Congessman Abeleda, share the views of petitioner.

(2) Terry v. Brandhowe, 341 U.S. 367.

plication remain no longer in doubt in so far as related to the question before us. It guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum *outside* of the Congressional Hall. *But it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof.* In the United States Congress Congressman Fernando Wood of New York was censured for using the following language on the floor of the House: "A monstrosity, a measure the most infamous of the many infamous acts of the infamous Congress." (Hinds' precedents, Vol. 2, pp. 789-799). Two other congressman were censured for employing insulting words during debate. (2 Hinds' precedent, 799-801). In one case, a member of Congress was summoned to testify on a statement made by him in debate but he invoked his parliamentary privilege. The Committee rejected his plea. (3 Hinds' Precedents 123-124).

For unparliamentary conduct, members of Parliament or Congress have been, or could be censured, committed to prison,[3] suspended, even expelled by the votes of their colleagues. The appendix to this decision amply attests to the consensus of informed opinion regarding the practice and the traditional power of legislative assemblies to take disciplinary action against its members, *including imprisonment, suspension or expulsion.* It mentions one instance of suspension of a legislator in a foreign country.

And to cite a local illustration, the Philippine Senate, in April 1949, suspended a senator for one year.

Needless to add, the Rules of Philippine House of Representatives provide that the parliamentary practices of the Congress of the United States shall apply in a supplementary manner to its proceedings.

This brings up the third point of the petitioner: the House may no longer take action against me, he argues, because after my speech, and before approving Resolution No. 59, it had taken up other business. Respondents answer that Resolution No. 59 was unanimously approved by the House, that such approval amounted to a suspension of the House Rules, which according to standard parliamentary practice may be done by unanimous consent.

Granted, counters the petitioner, that the House may suspend the operation of its Rules, it may not, however, affect past acts or renew its right to take action which had already lapsed.

The situation might thus be compared to laws[4] extending the period of limitation of actions that had lapsed. The Supreme Court of the United States has upheld such laws as against the contention that they impaired vested rights in violation of the Fourteenth Amendment (Campbel v. Holt, 115 U.S. 620). The states hold divergent views. At any rate, courts have declared that "the rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them."[5] And it *has been said that "Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body."* Consequently, "mere failure to conform to parliamentary usage will not invalidate the action (taken by a deliberative body) when the requisite number of members have agreed to a particular measure."[6]

The following is quoted from a reported decision of the Supreme Court of Tennessee:

> "The rule here invoked is one of parliamentary procedure, and it is uniformly held that it is within the power of all deliberative bodies to abolish, modify, or waive their own rules of procedure, adopted for the orderly conduct of business, and as security against hasty action." (Bennet v. New Bedford, 110 Mass. 433; Holt v. Somerville, 127 Mass. 408, 411; City of Sedalia v. Scott, 104 Mo. App. 595, 78 S. W. 276; Ex parte Mayor, etc., of Albany, 23 Wend. (N.Y.) 277, 280; Wheelock v. City of Lowell, 196 Mass. 220 230, 81 N. E. 977 124 Am. St. Rep. 543, 12 Ann. Cas. 1109; City of Cornith v. Sharp, 107 Miss. 696, 65 So. 868; McGraw v. Whetson, 69 Iowa 348, 28 N. W. 632; Tuell v. Meacham Contracting Co. 145 Ky. 181, 186, 140 S. W. 159, Ann. Cas. 1913B, 802) [Taken from the case of Rutherford v. City of Nashville, 79 South Western Reporter, p. 584.]

It may be noted in this connection, that in the case of Conggressman Stanbery of Ohio, who insulted the Speaker for which act a resolution of censure was presented, the House approved the resolution, despite the argument that other business had intervened after the objectionable remarks. (2 Hinds' Precedents pp. 799-800.)

On the question whether delivery of speeches attacking the Chief Executive constitutes disorderly conduct for which Osmeña may be disciplined, many arguments pro and con have been advanced. *We believe, however, that the House is the judge of what constitutes disorderly behaviour, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on factual circumstances of which the House knows best but which can not be depicted in black and white for presentation to, and adjudication by the Courts. For one thing, if this Court assume the power to determine whether Osmeña's conduct constituted disorderly behavior, it would thereby have assumed appellate jurisdiction, which the Constitution never intended to confer upon a coordinate branch of the Government. The theory of separation of powers fastidiously observed by this Court, demands in such situation a prudent refusal to interfere. Each department, it has been said, has exclusive cognizance of matters within its jurisdiction and is supreme within its own sphere. (Angara v. Electoral Commission, 63 Phil. 139.)*

"Sec. 200. *Judicial Interference with Legislature.* . . . The principle is well established that the courts will not assume a jurisdiction in any case which will amount to an interference by the judicial department with the legislature since each department is equally independent upon it by the Constitution.

"The general rule has been applied in other cases to cause the courts to refuse to intervene in what are exclusively legislative functions. Thus, where the state Senate is given the power to expel a member, the courts will not review its action or revise *even a most arbitrary or unfair decision.*" (11 Am. Jur., Const. Law, sec. 200, p. 902) Underscoring Ours).

The above statement of American law merely abridged the landmark case of Clifford v. French.[7] In 1905, several senators who had been expelled by the State Senate of California for having taken a bribe, filed mandamus proceedings to compel reinstatement, alleging the Senate had given them no hearing, nor a chance to make defense, besides falsity of the charges of bribery. The Supreme Court of California declined to interfere, explaining in orthodox juristic language:

"Under our form of government, the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department or of either house thereof, taken in pursuance of the power committed exclusively to that department by the Constitution. It has been held by high authority that, even in the absence of an express provision conferring the power, every legislative body in which is vested the general legislative power of the state has the implied *power to expel a member for*

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(3) Kilbourn v. Thompson, 103 U.S. 189; Hiss v. Bartlett & Gray, 468, 63 Am. Rec. 768, 770.

(4) Rules of the House have not the force of law, but they are merely in the nature of by-laws prescribed for the orderly and convenient conduct of their own proceedings. (67 Corpus Juris Secundum, p. 870).

(5) 67 Corpus Juris Secundum, p. 870.

(6) South Georgia Power v. Bauman, 169 Ga. 649; 151 S. W. 515.

(7) 140 Cal. 604; 609 L.R.A. 556.

any cause which it may deem sufficient. In Hiss v. Barlett, 3 Grey 473, 63 Am. Dec. 768, the supreme court of Mass. says, in substance, that this power *is inherent in every legislative body that it is necessary to enable the body 'to perform its high function,* and *is necessary to the safety of the state;' That it is a power of self-protection, and that the legislative body must necessarily be the sole judge of the exigency which may justify and require its exercise by either house of no provision authorizing courts to control, direct, supervise, or forbid the exercise by either house of the power to expel a member. 'These powers are functions of the legislative department and therefore, in the exercise of the power thus committed to it, the Senate is supreme.* An attempt by this court to direct or control the legislature, or either house thereof, in the exercise of the power, would be an *attempt to exercise legislative functions,* which it is expressly forbidden to do."

We have underscored in the above quotation those lines which in our opinion emphasize the principles controlling this litigation. Although referring to expulsion, they may as well be applied to other disciplinary action. Their gist are applied to the case at bar: *the House has exclusive power; the courts have no jurisdiction to interfere.*

Our refusal to intervene might impress some readers as subconscious hesitation due to discovery of impermissible course of action in the legislative chamber. Nothing of that sort; we merely refuse to disregard the allocation of constitutional functions which it is our special duty to maintain. Indeed, in the interest of comity, we feel bound to state that in a conscientious survey of governing principles and/or episodic illustrations, we found the House of Representatives of the United States taking the position on at least two occasions that *personal attacks upon the Chief Executive* constitute unparliamentary conduct or breach of order.[8] And in several instances, it took action against offenders, *even after other business* had been considered.[9]

Petitioner's principal argument against the House's power to suspend is the Alejandrino precedent. In 1924, Senator Alejandrino was, by resolution of the Senate, suspended from office for 12 months because he had assaulted another member of that body for certain phrases the latter uttered in the course of a debate. The senator applied to this court for reinstatement, challenging the validity of the resolution. Although this court held that in view of the separation of powers, it had no jurisdiction to compel the Senate to reinstate petitioner, is nevertheless went on to say the Senate had no power to adopt the resolution because suspension for 12 months amounted to removal, and the Jones Law (under which the Senate was then functioning) gave the Senate no power to remove an *appointive member,* like Senator Alejandrino. The Jones Law specifically provided that "each House may punish its members for disorderly behaviour, and, with the concurrence of two-thirds votes, expel an *elective* member (sec. 18). Note particularly the word "elective."

The Jones Law, it must be observed, empowered the Governor General to appoint "without consent of the Senate and without restriction as to residence senators x x x who will, in his opinion, best represent the Twelfth District." Alejandrino was one appointive senator.

It is true, the opinion in that case contained an *obiter dictum* that "suspension deprives the electoral district of representation without that district being afforded any means by which to fill that vacancy." But that remark should be understood to refer particularly to the *appointive senator* who was then the affected party and who was by the same Jones Law charged with the duty to represent the Twelfth District, and maybe the views of the Government of the United States or of the Governor-General, who had appointed him.

[8] Cannon's Precedents (1936) par. 2497 (William Willet, Jr. of New York), par. 2498 (Louis T. McFadden of Pennsylvania).

[9] Constitution, Jefferson's Manual and the House of Representatives by Louis Beachler (1955) p. 382.

It must be observed, however, that *at that time* the Legislative had only those powers which were granted to it by the Jones Law;[10] *whereas now the Congress has the full legislative powers and prerogatives of a sovereign* nation except as restricted by the Constitution. *In other words, in the Alejandrino case, the court reached the conclusion that the Jones Law did not give the Senate the power it then exercised — the power of suspension for one year.* Whereas now, as we find, the Congress *has the inherent legislative prerogative of suspension*[11] which the Constitution did not impair. In fact, as already pointed out, the Philippine Senate did suspend a senator for 12 months in 1949.

"The legislative power of the Philippine Congress is plenary, subject only to such limitations as are found in the Republic's Constitution. So that any power deemed to be legislative by usage or tradition, is necessarily possessed by the Philippine Congress, unless the Constitution provides otherwise." (Vera v. Avelino, 77 Phil. 192, 212.)

In any event, petitioner's argument as to deprivation of the district's representation can not be more weighty in the matter of suspension than in the case of imprisonment of a legislator, yet deliberative bodies have the power in proper cases, to commit one of their members to jail.[12]

Now come questions of procedure and jurisdiction. The petition intended to prevent the Special Committee from acting in pursuance of House Resolution No. 59. Because no preliminary injunction had been issued, the Committee performed its task, reported to the House, and the latter approved the suspension order. The House has closed its session, and the Committee has ceased to exist as such. It would seem, therefore, the case should be dismissed for having become moot or academic.[13] Of course, there is nothing to prevent petitioner from filing new pleading to include all members of the House as respondents, ask for reinstatement and thereby to present a justiciable cause. Most probable outcome of such reformed suit, however, will be a pronouncement of lack of jurisdiction as in Vera v. Avelino[14] and Alejandrino v. Quezon.[15]

At any rate, having perceived suitable solutions to the important questions of political law, the Court thought it proper to express at this time its conclusions on such issues as were deemed relevant and decisive.

Accordingly, the petition has to be, and is hereby dismissed. So ordered.

Paras, C. J., Bautista Angelo, Concepcion, Barrera, Gutierrez David, Paredes and Dizon, JJ., concurred.

Padilla, J. abstained.

Reyes, J. B. L., J., dissenting.

I concur with the majority that the petition filed by Congressman Osmeña, Jr., does not make out a case either for declatory judgment or certiorari, since this Court has no original jurisdiction over declaratory judgment proceedings, and certiorari is available only against bodies exercising judicial or quasi-judicial powers. The respondent committee, being merely fact finding was not properly subject to certiorari.

[10] The Jones Law placed "In the hands of the people of the Philippines as large a control of their domestic affairs as can be given them, without in the meantime impairing the rights of sovereignty by the people of the United States." (Preamble)

[11] Apart from the view that power to remove includes the power to suspend as an incident. (Burnap v. U.S. 512, 64, L. Ed. 693, 695.) This view is distinguished from Hebron v. Reyes, G.R. No. L-9124, July 28, 1958. (See Gregory v. Mayor, 21 N.E. 120.) But we need not to explain this now. Enough to rely on the Congressional inherent power

[12] See Appendix par. VII, Cushing.

[13] This, apart from doubts on (a) our jurisdiction to entertain original petitions for declaratory judgments, and (b) availability of certiorari or prohibition against respondents who are not exercising judicial or ministerial functons (Rule 67, secs. 1 and 2).

[14] See supra.

[15] 46 Phil. 83.

I submit, however, that Congressman Osmeña was entitled to invoked the Court's jurisdiction on his petition for a writ of prohibition against the committee, in so far as House Resolution No. 59 (and its sequel, Resolution No. 175) constituted an unlawful attempt to divest him of an immunity from censure or punishment, an immunity vested under the very Rules of the House of Representatives.

House Rule XVII, on Decorum and Debates, in its section 77, provides as follows:

"If it is requested that a Member be called to order for words spoken in debate, the Member making such request shall indicate the words excepted, and they shall be taken down in writing by the Secretary and read aloud to the House; but the Member who uttered them shall not be held to answer, nor be subject to the censure of the House therefor, if further debate or other business has intervened."

Now, it is not disputed that after Congressman Osmeña had delivered his speech and before the House adopted, fifteen days later, the resolution (No. 59) creating the respondent Committee and empowering it to investigate and recommend proper action in the case, the House had acted on other matters and debated them. That being the case, the Congressman, even before the resolution was adopted, had ceased to be answerable for the words uttered by him in his privilege speech. By the express wording of the Rules, he was no longer subject to consure or disciplinary action by the House. Hence, the resolution, in so far as it attempts to divest him of the immunity so acquired and subject him to discipline and punishment, when he was previously not so subject, violates the constitutional inhibition against *ex post facto* legislations, and Resolutions Nos. 59 and 175 are legally obnoxious and invalid on that score. The rule is well established that a law which deprives an accused person of any substantial right or immunity possessed by him before its passage is *ex post facto* as to prior offenses (Cor. Jur. Fed. 16-A, section 144, p. 153; Peo, vs. Talkington, 47 Pac, 2d 368; U.S. vs. Carfinkel, 69 F. Supp. 849).

The foregoing also answer the contention that since the immunity was but an effect of section 7 of House Rule XVII, the House could, at any time, remove it by amending those Rules and Resolutions Nos. 59 and 175 effected such an amendment by implication. The right of the house to amend its Rules does not carry with it the right to retroactively divest the petitioner of an immunity he had already acquired. The Bill of Rights is against it.

It is contended that as the liability for his speech attached when the Congressman delivered it, the subsequent action of the House only affected the procedure for dealing with that liability. But whatever liability Congressman Sergio Osmeña, Jr. then incurred was extinguished when the House thereafter considered other business; and this extinction is a substantive right that can not be subsequently torn away to his disadvantage. On an analogous issue this Court, in People vs. Parel, 44 Phil. 437, has ruled:

"In regard to the point that the subject of prescription of penalties and of penal actions pertains to remedial and not substantive law, it is to be observed that in Spanish legal system, *provisions for limitation or prescription of actions are invariably classified as substantive and not as remedial law;* we thus find the provisions for the prescription of criminal actions in the Penal Code and not in the 'Ley de Enjuiciamiento Criminal.' This is in reality a more logical law. *In criminal cases prescription is not, strictly speaking, a matter of procedure; it bars or cuts off the right to punish the crime and, consequently, goes directly to the substance of the action. x x x*" (*Emphasis supplied*)

I see no substantial difference, from the standpoint of the the constitutional prohibition against *ex post facto* laws, that the objectionable measures happen to be House Resolutions and not statutes. In so far as the position of petitioner Osmeña is concernd, the essential point is that he is being subjected to a punishment to which he was formerly not amendable. And while he was only meted out a suspension of privileges, that suspension is as much a penalty as imprisonment or a fine which the house could have inflicted upon him had it been so minded. Such punitive action is violative of the spirit, if not of the letter, of the constitutional provision against *ex post facto* legislation. Nor it is material that the punishment was inflicted in the exercise of disciplinary power. "The *ex post facto* effect of a law," the Federal Supreme Court has ruled, "can not be evaded by giving civil form to that which is essntially criminal" (Burgess vs. Salmon, 97L. Ed. (U.S.,) 1104, 1106; Cummings vs. Missouri, 18 L Ed. 276).

The plain purpose of the immunity provided by the House rules is to protect the freedom of action of its members and to relieve them from the fear of disciplinary action taken upon second thought, as a result of political convenience, vindictiveness, or pressures. It is unrealistic to overlook that without the immunity so provided, no member of Congress can remain free from the haunting fear that his most innocuous expressions may at any time afterward place him in jeopardy of punishment whenever a majority, however transient, should feel that the shifting sands of political expediency so demand. A rule designed to assure that members of the House may freely act as their conscience and sense of duty should dictate complements the parliamentary immunity from outside pressure enshrined in our Constitution, and is certainly deserving of liberal interpretation and application.

The various precedents, cited in the majority opinion, as instances of disciplinary action taken notwithstanding intervening business, are not truly applicable. Of the five instances cited by Deschler (in his edition of Jefferson's Manual), the case of Congressman Watson of Georgia involved also *printed* disparaging remarks by the respondent (III Hinds Precedents, sec. 2637), so that the debate immunity rule afforded no defense; that of Congressman Weaver and Sparks was one of censure for actual disorderly conduct (II Hinds, sec. 1657); while the cases of Congressmen Stanbery of Ohio, Alex Long of Ohio, and of Lovell Rousseau of Kentucky (II Hinds, secs. 1248, 1252 ant 1655) were decided under Rule 62 of the U.S. House of Rep-presentatives as it stood before the 1880 amendments, and was differently worded. Thus, in the Rousseau case, the ruling of Speaker Colfax was to the following effect (II Hinds Precedents, page 1131):

"This sixty-second rule is divided in the middle by a semicolon and the Chair asks the attentions of the gentleman from Iowa (Mr. Wilson) to the language of that rule, as it settles the whole question:

"62. If a member be called to order for words spoken in debate, the person calling him to order shall repeat the words excepted to" —

That is, the "calling to order" is "excepting" to words spoken in debate—"and they shall be taken down in writing at the clerk's table; and no Member shall be held to answer, or be subject to the censure of the House, for words spoken in debate, if any other Member has spoken, or other business has intervened, after the words spoken, and before exception to them shall have been taken."

Th first part of this rule declares that "calling to order" is "excepting to words spoken in debate." The second part of the rule declares that a Member shall not be held subject to censure for words spoken in debate if other business has intervened after the words have been spoken and before "exception" to them has been taken. Exception to the words of the gentleman from Iowa (Mr. Grinnell) was taken by the gentleman from Kentucky (Mr. Harding), the gentleman from Massachusetts (Mr. Banks), the gentleman from Kentucky (Mr. Rousseau), and also by the Speaker of the House as the records of the Congressional Globe will show. The distinction is obvious between the two parts of

the rule. In the first part it speaks of a Member excepting to language of another and having the words taken down. In the last part of the rule it says he shall not be censured thereafter unless exception to his words were taken; but it omits to add as an essential condition that the words must also have been taken down. The substantial point, required in the latter part of the rule is, that exception to the objectionable words must have been taken."

The difference between the Rules as invoked in these cases and the Rules of our House of Representatives is easily apparent. As rule 62 of the United States House of Representatives stood before 1880, all that was required to preserve the disciplinary power of the House was that *exception should have been taken* to the remarks on the floor before further debate or other business intervened. Under the rules of the Philippine House of Representatives, however, the immunity becomes absolute if other debate or business has taken place before the motion for censure is made whether or not exceptions or point of order have been made to the remarks complained of at the time they were uttered.

While it is clear that the parliamentary immunity established in Article VI, section 15 of our Constitution does not bar the members being questioned and disciplined by Congress itself for remarks made on the floor, that disciplinary power does not, as I have noted, include the right to retroactively amend the rules so as to divest a member of an immunity already gained. And if Courts can shield an ordinary citizen from the effects of *ex post facto* legislation, I see no reason why a member of Congress should be deprived of the same protection. Surely membership in the legislature does not mean forfeiture of the liberties enjoyed by the individual citizen.

"The Constitution empowers each house to determine its rules of proceedings. *It may not by its rules ignore constitutional restraints or violate fundamental rights* and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more accurate or even more just." (U.S. vs. Ballin,, Joseph & Co., 36 Law Ed., 324-325). "Courts will not interfere with the action of the state senate in reconsidering its vote on a resolution submitting an amendment to the Constitution, *where its action was in compliance with its own rules and there was no constitutional provision to the contrary.*" (Crawford vs. Gilchrist, 64 Fla. 41, 59 Sc. 963). (Emphasis Supplied)

Finally, that this Court possesses no power to direct or compel the Legislature to act in any specified manner, should not deter it from recognizing and declaring the unconstitutionality and nullity of the questioned resolutions and of all action that has been taken in pursuance thereof. Although the respondent committee has been disbanded after the case was filed, the basic issues remain so important as to require adjudication by this Court.

Labrador, J., dissenting:

I fully concur in the above dissent of Mr. Justice J. B. L. Reyes and I venture to add:

Within a constitutional government and in a regime which purports to be one of law, where law is supreme, even the Congress in the exercise of the power conferred upon it to discipline its members, must follow the rules and regulations that had itself promulgated for its guidance and for that of its members. The rule in force at the time Congressman Osmeña delivered the speech declared by the House to constitute a disorderly conduct provides:

> "x x x but the Member who uttered them shall not be held to answer, nor be subject to the censure of the House thereof, if further debate or other business has intervened, (Rules XVII Sec. 7, Rules, House of Representatives.)

Congressman Osmeña delivered the speech in question on June 23, 1960. It was only on July 8, or 15 days after June 23, 1960 when the House created the committee that would investigate him. For fully 15 days the House took up other matters. All that was done, while the speech was being delivered, was to have certain portions thereof deleted. I hold that pursuant to its own Rules the House may no longer punish Congressman Osmeña for the speech delivered fifteen days before.

The fact that no action was promptly taken to punish Congressman Osmeña immediately after its delivery, except to have some parts of the speech deleted, shows that the members of the House did not then consider Osmeña's speech a disorderly conduct. The idea to punish Congressman Osmeña, which came 15 days after, was, therefore, an afterthought. It is, therefore, clear that Congressman Osmeña is being made to answer for an act, after the time during which he could be punished therefor had lapsed.

The majority opinion holds that the House can amend its rules any time. We do not dispute this principle, but we held that the House may not do so in utter disregard of the fundamental principle of law that an amendment takes place only after its approval, or, as in this case, to the extent of punishing an offense after the time to punish had elapsed. Since the rule, that a member can be punished only before other proceedings have intervened, was in force at the time Congressman Osmeña delivered his speech, the House may not ignore said rule. It is said in the majority opinion that the rule limiting the period for imposition of a penalty for a speech to the day it was made, is merely one of procedure. With due respect to the opinion of the majority, we do not think that it is merely a rule of procedure; we believe it actually is a limitation of the time in which the House may take punitive action against an offending member; it is a limitation (in reference to time) on the liability to punishment. As Mr. Justice J. B. L. Reyes points out, the rule is substantive, not merely a procedural principle, and may not be ignored when invoked.

If, this Government is a Government of laws and not of men, then the House should observe its own rule and not violate it by punishing a member after the period for indictment and punishment had already passed. Not because the subject of the Philippic is no less than the Chief Magistrate of the nation should the rule of the House be ignored by itself. It is true that our Government is based on the principle of separation of powers between the three branches thereof. I also agree to the corollary proposition that this Court should not interfere with the legislature in the manner it performs its functions; but I also hold that the Court cannot abandon its duty to pronounce what the law is when any of its (the House) members, or any humble citizen, invokes the law.

Congressman Osmeña has invoked the protection of a rule of the House. I believe it is our bounden duty to state what the rule being invoked by him is, to point out the fact that the rule is being violated in meting out punishment for his speech; we should not shirk our responsibility to declare his rights under the rule simply on the broad excuse of separation of powers. Even the legislature may not ignore the rule it has promulgated for the government of the conduct of its members and the fact that a coordinate branch of the Government is involved, should not deter us from performing our duty. We may not possess the power to enforce our opinion if the House chooses to disregard the same. In such case the members thereof stand before the bar of public opinion to answer for their act in ignoring what they themselves have approved as their norm of conduct.

Let it be clearly understood that the writer of this dissent personally believes that vituperous attacks against the Chief Executive, or any official or citizen for that matter, should be condemned. But where the Rules, promulgated by the House itself, fix the period during which punishment may be meted out, said Rules should be enforced regardless of who may be prejudiced thereby. Only in that way may the supremacy of the law be maintained.