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Supreme Court and Projected Court of Appeals

For some time past a project has been under consideration in our Legislature for the establishment of a Court of Appeals, and this movement took the shape, in the last session of the Legislature, of an Act which failed to receive the approval of Governor General Stimson. The public at large has as yet manifested little or no interest in the subject, owing no doubt to the consideration that the matter is primarily one where professional legal experience is called for and to the further reflection that, at any rate, nothing radical can be accomplished by the Legislature without the approval of the Congress of the United States. In view of the fact that the bill which failed to obtain the approval of the Governor General will probably receive further consideration at the next session of the Legislature, we believe this to be an opportune time to direct the attention of the public to the problem that is being considered and to point out what appears to us to be the most practical solution of the trouble with which we are confronted.

The fundamental fact giving rise to the project for the establishment of a Court of Appeals, is that the Supreme Court has for many years been overburdened with work, and that its calendars are being clogged with many trivial cases, which require the time and attention of the court to the exclusion of matters of greater importance. We are informed that this court is now disposing of cases at the rate of nearly two thousand per annum, to say nothing of the thousands of informal orders that find expression in minute entries from day to day during the active sessions of the court. It is much to be doubted whether there is a court of last resort in any other country that is driven at this speed. Needless to say that the situation is one that requires serious attention from the lawmakers.

The influx of excessive work on the Supreme Court began with the expansion of commercial activities in the Islands incident to the World War and was first noticeably felt in 1917; and to meet the incoming flood of new work on the court the Philippine Legislature, in that year, increased the number of the Supreme Court Judges to nine. In the first years of the increased business the access of litigants to the Supreme Court was obstructed by the conditions in the Courts of First Instance, where the accumulation of cases was so great that the judges of those courts were unable to dispose of them. But this condition was cured temporarily by the creation of new judgeships about eight years ago; and the same remedy has been lately applied again by the Legislature. The result is that the Supreme Court, with a personnel of nine, is now receiving nearly, or about, three times as many cases annually as came upon its calendar when there were five members of the court to attend to its business. Upon this it is obvious that, sooner or later, some remedy must be found.

To correct this trouble one or the other of the only two possible courses must be adopted, that is, the number of the Justices of the Supreme Court must be again increased or a Court of Appeals must be created to take care of a good part of the business now coming to the Supreme Court. The first of these alternatives is the one that commends itself to our judgment; and as the considerations bearing upon this feature of the discussion are simple, we shall say what is to be said about it now.

In this connection it is to be borne in mind that the Philippine Legislature has the authority to increase the number of the Justices of the Supreme Court without the approval of Congress. No Congressional Act prescribes the precise number of the Justices of the Supreme Court, and in fact as the court is now constituted the number of Justices at present commissioned is fixed by section 133 of the Administrative Code of the Philippine Islands and by no other authority. The circumstance that the situation confronting us can be relieved by the Philippine Legislature, acting without reference to Congress, shows that this course is at least practicable, considered with reference to the powers of the Philippine Legislature; and when its easy accomplishment is contrasted with the difficulties of establishing a Court of Appeals, the inference must be that the remedy proper to be now applied by the Legislature is to increase the number of Justices to eleven.

With respect to the propriety of thus increasing the personnel of the Supreme Court, the first consideration that appeals to us is that this course involves the expenditure of less than half the money that will be required for the establishment and maintenance of a Court of Appeals; for the addition of two members to the Supreme Court will involve an outlay for their salary and that of their stenographers of only ₱45,400, while the salaries of the five members of the Court of Appeals with their stenographers, and a clerk and deputy clerk, as fixed in the companion bill to the vetoed Act (Sen. Bill No. 159) amount to ₱101,000. It must be remembered also that the expenses of the proposed Court of Appeals, as fixed in the companion bill, do not include anything for the additional subordinate employees to be authorized by the Secretary of Justice for the new court, or for other expenses of any sort. On the other hand, if the number of Justices of the Supreme Court be increased, as suggested, the additional incidental expense to the Supreme Court will be slight. We are, we believe, in conservative bounds, in estimating the expense of increasing the membership of the Supreme Court at about forty per centum of the amount necessary for the Court of Appeals.

In making this statement we do not overlook the circumstance that the proposed Court of Appeals will have five Justices, while the suggested increase in the Supreme Court contemplates only two additional members; and it is of course obvious that five judges can do more work than two. But when we consider the amount of judicial energy that would necessarily be expended by the Court of Appeals and the Supreme Court in determining the questions that must arise over the problem of the jurisdiction of the two courts and by the Supreme Court in determining the preliminary question whether, in a given case, it will entertain an appeal, it will be seen that the effective increase of judicial energy under the double establishment would be much less than would be indicated in the number of new judges (or Justices) in the Court of Appeals. In other words, with the establishment of a second appellate court, the two courts will always be occupied with a series of new problems that are wholly absent while only one court exists.

The appointment of two additional members to the Supreme Court would practically assure at all times during the regular terms of the court the presence of a sufficient number of Justices to permit two full divisions of the court to operate contemporaneously. As the law now stands, four members are necessary to constitute a quorum in a division of the Supreme Court. This means that eight should be present in order to constitute two divisions. With the membership of the court fixed at nine, as at present, it happens more frequently than otherwise that one or the other of the two divisions, and some times both, are short of the requisite membership. We may here state, by the way, that the court is permitted by law to sit in divisions for the decision of minor cases only; and experience has shown that the operation of the court in division supplies a speedy and efficient means for disposing of the less important cases.

Again, with the increased membership of the court, it can be reasonably expected that in some years at least, and as required by the exigencies of business, the full court may extend its term for the decision even of the most important cases beyond the nine months period covered by the regular sessions, but this cannot be easily understood without reference to the leave privileges of the members of the court, which we shall not now stop to explain. It is enough to say that although the law now actually requires only nine months of consecutive work from members of the court who are not on leave, it has for more than ten years been the custom of the court to maintain a special division for light cases during at least part of the vacation period; and in one year six members (comprising a quorum of the full court) worked during vacation for the dispatch of important cases. Of course when the Justices apply themselves steadily to the work of the court during the ordinary vacation period, it is but reasonable that they should have an equal period of relief during some other part of the year; and the law in fact sanctions this by allowing the time thus served to be held for future leave. This circumstance supplies of course a strong motive to the members of the court for extending their labors into the vacation period, for it not infrequently happens that a member of the court needs to absent himself from the court during the regular sessions not only for the use of leave privileges but even upon account of sickness; and when this occurs it is desirable for the member to have the privilege, for such it really is, of working during vacation periods.

So far as we are aware the only serious objection thus far advanced to increasing the membership of the Supreme Court is based on the fear that, with eleven members, the court would be undesirably cumbersome in the dispatch of cases coming before the full court. The suggestion is not without some force, but it fails to take account of the fact that with the increased membership, and under the liberal provisions of law governing leave, a more satisfactory distribution of leave allowances throughout the year can be made, with the result that there would not often be a full at-

tendance of eleven members at one time. The criticism based on supposed inconvenience of conducting business with a court of eleven members is not in our view sufficiently weighty to justify the rejection of the plan.

We shall now say a few words with reference to the Senate bill creating a Court of Appeals, which was vetoed by Governor General Stimson. At the outset we note that the failure of the Governor General to approve the bill was based upon the sole ground that the bill did not contain a provision giving the Supreme Court full power, in its discretion, to review and correct any decision rendered by the Court of Appeals. From the wording of the message expressing the grounds of the nonapproval, it appears that the Governor General was of the opinion that the discretionary right of review by the Supreme Court of the decisions of the Court of Appeals should extend both to questions of law and of fact. It is to be supposed that if the Legislature proceeds further with the project, the criticism made by the Governor General will be met by the insertion in the bill of a provision giving the suggested power of review to the Supreme Court; for it is scarcely credible that Congress would bother itself about approving such a measure as this where the bill had been vetoed by the Governor General.

With respect to this right of review by our Supreme Court of the decisions of the Court of Appeals, it is obvious that if the Supreme Court should undertake to review the decisions of the Court of Appeals in all cases, both on questions of law and fact, the relief to the Supreme Court would not be sufficient to justify the establishment of the court. But of course it is not contemplated that the Supreme Court would in fact review all the decisions of the Court of Appeals. What the Governor General apparently intended is that our Supreme Court should, in its discretion, exercise a power of review in particular cases. In this, we presume, it was intended to suggest a relation between the courts somewhat similar to that which now exists, with respect to review, between the Supreme Court of the United States and the Supreme Court of the Philippine Islands. In this connection it will be remembered that the Supreme Court of the United States has a discretionary power in certain cases to review the decisions of the Supreme Court of the Philippine Islands. But it is not made obligatory upon the higher court to exercise this power. The result is that the Supreme Court of the United States considers, as a preliminary matter in each case, the question whether it will review the decision. Formal opinions are never written by the Supreme Court of the United States in resolving such matters; and this implies a great relief to the higher tribunal in the saving of the labor of writing decisions. If the recommendation of Governor General Stimson should be incorporated in the law, the Supreme Court of the Philippine Islands would pass informally upon petitions for appeals from decisions of the Court of Appeals, and naturally such applications would be dismissed unless something should appear in the record which should make it desirable for the Supreme Court in its discretion to review particular cases. If the court should operate along this line and entertain appeals only in its discretion, the relief to the Supreme Court would undoubtedly be great. It should further be observed that if the Supreme Court is given full discretionary authority to review any decision of the Court of Appeals, this fact will justify, and perhaps even require a readjustment of some of the provisions of the proposed law limiting the jurisdiction of the Court of Appeals, as for instance, in criminal cases.

A careful examination of the provisions of the vetoed act shows that it suffers from other grave defects than that mentioned by Governor General Stimson; and even if the bill should be so amended as to cure that defect, there are, in our opinion, other reasons why the bill should not obtain the approval of the Governor General or of the Congress of the United States. Into these questions we do not propose here to enter deeply, but a few words upon one or two prominent features of the bill will not be out of place.

The cabalistic word *Jurisdiction* is the name of an abyss of entanglements in which both the Court of Appeals and the Supreme Court would find themselves involved under this bill. The act attempts to define the jurisdiction of the two courts in mutually exclusive terms. Take the provision relating to criminal appeals. Under subsection (b) of section 1, of the act, the exclusive appellate jurisdiction of the Supreme Court extends to all criminal cases in which any of the appellants was found guilty of an offense for which the law prescribes a penalty the term of which exceeds six years; while conversely, under section 3 of the bill, the jurisdiction of the Court of Appeals extends to all criminal cases in which none of the appellants was found guilty of an offense for which the law prescribes a penalty the term of which exceeds six years. In other words, the dividing line between the respective jurisdictions of the two courts is the penalty fixed by law for the offense. Observe here that the provision does not say "when the sentence imposed by the trial court involved a penalty in excess of six years"—which would have supplied a fixed and easy criterion for determining the jurisdiction. No: the jurisdiction must be determined by the penalty which the law prescribes for the particular offense. But the penalty which the law prescribes can seldom be known with certainty until all the elements of the offense have been analyzed and weighed. Even in homicide cases, where the penalty normally ranges from twelve to twenty years, the court may, in consideration of the presence of two or more mitigating circumstances, reduce the penalty to a very short period, and under other conditions apply the penalty appropriate to a mere misdemeanor. Until a case has been tried nobody can really know what the penalty fixed by law for a particular offense is. The consequence would be that under the proposed bill the Court of Appeals would frequently try cases only to find that the appropriate penalty was in excess of its jurisdiction, while *per contra* the Supreme Court would try a similar case only to find in the end the appropriate penalty was below its jurisdiction. Legislation having in it possibilities of this character should not find favor in any quarter. The author of the bill, in defining the jurisdiction of the two courts, would have done well to have followed the language used in the similar situation contemplated in section 138 of the Administrative Code where the jurisdiction of the Supreme Court in division is determined by the penalty imposed by the lower court.

A feature of the bill which seems to us objectionable is that relating to appeals in contested elections. Under the law as it formerly stood appeals were only permitted to the Supreme Court, from the decisions of Courts of First Instance, when the contest involved a provincial office. At the legislative session of 1927, the law was so amended as to permit appeals from the decisions of the Courts of First Instance in respect to the office of municipal president. Under subsection (i) of the proposed bill creating the Court of Appeals the right of appeal in contested elections is extended to municipal offices generally. Under the existing law permitting appeals to the Supreme Court in contests over the office of municipal president, the Supreme Court has been called upon to decide fifty or more contests over the office of municipal president arising from the election of 1928. With the extension of the right of appeal to all municipal offices, this branch of litigation will undoubtedly undergo corresponding expansion; and if subsection (i) stands, the Supreme Court in the future will find its time largely occupied with litigation of this character. It is noteworthy that the law gives these cases the right of way in the Supreme Court; and it not infrequently happens that the court must postpone the decision of civil cases involving enormous interests in order to decide whether one person or another has been elected to a municipal office in some remote province. We do not criticise the amendment of the law so far as relates to the right of appeal in such cases; but these election cases are precisely a sort of litigation that should be confided to the Court of Appeals. The Supreme Court should not be burdened with hearing them. Election contests do not involve, as a rule, the application of difficult principles of law. They involve rather the investigation of a multitude of details, such as the examination of thousands of particular ballots. The proper place for the decision of these appeals is, in our opinion, the Court of Appeals, if one should be established.

We proceed no farther with our comment on the details of the act, since what has been said suffices to show that the project suffers from grave defects, which are possibly of an incurable nature; and we are thus driven back to the first alternative, namely, the increase of the number of the Justices of the Supreme Court to eleven, as supplying the only practical solution of the problem presented by the congested calendars of that Court.

Ipo Gulch . . . Is El Dorado

(*Concluded from page 9*)

Ipo up to date. But Ipo by no means harbors all the gold there is in the mineral region of which it is a part. Other strikes will be made in that region some day, there is scarce a doubt. The very fields yield gold, but none is found in paying quantities. Yet it is there, and surely comes from some rich lode.

There is at least half a million gold in the dirt that makes up Novaliches dam, another feature of the new water system. And all along the way, from the dam toward the city as far as the bridge at the town of Novaliches, panning the dirt in any weather hole reveals *color*. But it is too little to pay. Where it its origin? Maybe in some rich lode, never discovered by the Spaniards, only known to natives of the region who have grown old and died. From times unknown placer mining was carried on by the native Filipinos in this region, until it played out. The lode, the rich mother lode! Some day someone will find it. A glance at the list of gold exports accompanying this paper, is enough to show that gold mining here is but well begun. Where the *hidalgos* searched in vain, or found mines of little profit when worked by the methods of the times, the modern miner goes in with the aid of science and machinery and breaks loose millions—a large part of which goes back to the country in wages and becomes of actual value here.