answer. The respondent judge denied the request. The caus was brought to the Supreme Court on *certiorari.*

The question to be resolved is whether or not, in accord ance with the facts alleged, the petitioner may be obliged t answer the question posed by the fiscal.

HELD: It is inevitable that we must arrive at the conclu sion that the answer of the petitioner might be incriminating If he had seen Manuel Jacinto before and after the latter wa killed, and that he knew who had killed him, and who ha ordered him killed, it was because the petitioner was one o those who had received the order to kill. In that case he wa responsible for the death of Manuel Jacinto much like th others. If by accident he was present before and after th death and he had nothing to do with the death of Jacinto, i would have been easy for him to say that he was merel passing by. But if he had also known accidentally the orde of the Commander to kill, it was indeed a very suspicious ac cident. Because he had been informed of the many thing that had happened, and taking into consideration the fac that the petitioner was a Huk when Manuel Jacinto was killed it is not unfounded to conclude that he had something to d in the perpetration of the crime, and because of this, undoubt edly, he did not wish to answer the question in order that hi participation might not be discovered. (*Fernando v. Magla nok et al., G. R. No.* L-7018, July 26, 1954.)[31]

[31] See Sec. 79, Rule 123, Rules of Court. In *Worcester v. Ocampo* 22 *Phil.* 42, and *People v. Vidal et al., G. R. No.* 42481, *January,* 1935 (unpublished), it was held that when the proven circumstances ten to fix the liability upon a party who has it in his power to offer evidence of all the facts as they existed and thus rebut the inferenc of said circumstances, and he fails to offer such proof, the natura conclusion is that such proof, if produced, instead of rebutting, would support such inference. This case of Fernando v. Maglanok seems to be a qualification of the above ruling.

LEGISLATION

THE JUDICIARY REVAMP ACT

This Act has increased the number of Judges of First Instance from 107 to 120. The increase was made imperative by the fact that court business had expanded to such a volume that the previous number of judges had been unable to cope with it.*

The Act has likewise abolished the positions of Judges-at-large and Cadastral Judges, creating in their stead the new positions of Auxiliary District Judges.** The latter, unlike the former, shall be commissioned to a particular judicial district and have as their permanent station such place or places *within* the judicial district as may be determined by the Secretary of Justice. Only with the prior approval of the Supreme Court may the Secretary of Justice assign an Auxiliary District Judge to any court or province within *another* judicial district. This law therefore takes away from the Secretary of Justice the authority to send a Judge-at-large or Cadastral Judge anywhere in the Philippines.

* Statistics from the Department of Justice showed that as of the end of January, 1954, the total number of cases pending in various Courts of First Instance was 57,336.

** There were 33 positions of Judges-at-large and Cadastral Judges abolished; in their place, 26 positions of Auxiliary District Judges have been created by this Act.

[Republic Act No. 1186]

AN ACT TO AMEND AND REPEAL CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-SIX OTHERWISE KNOWN AS "THE JUDICIARY ACT OF 1948" AND FOR OTHER PURPOSES.

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Section 1. Sections *eleven, twenty-eight, forty, forty-one, forty-two,* the second, third, eleventh and twelfth paragraphs of sections forty-nine, fifty, *fifty-one,* fifty-two, and the second, third, fourth, fifth, seventh, tenth, and eleventh sub-paragraphs of the second paragraph of section fifty-four, and section *sixty* of Republic Act Numbered Two Hundred and ninety-six, as amended, are amended to read as follows: [1]

"SEC. 11. Appointment and Compensation of Justices of the Supreme Court.—The Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments. The Chief Justice of the Supreme Court shall receive a compensation of twenty one thousand *pesos per annum* and each Associate Justice shall receive a compensation of twenty thousand *pesos per annum.* The Chief Justice of the Supreme Court shall be so designated in his commission; and the Associate Justices shall have precedence according to the dates of their respective commissions, or, when the commissions of two or more of them bear the same date, according to the order in which their commissions may have been issued by the President of the Philippines: PROVIDED HOWEVER, that any member of the Supreme Court who has been reappointed to that Court after rendering service in any other branch of the Government shall retain the precedence to which he is entitled under his original appointment and his service in the Court shall, to all intents and purposes, be considered as continuous and uninterrupted.

"SEC. 28. Qualifications and Compensation of Justices of the Court of Appeals.—The Justices of the

[1] Italics supplied with a view to pointing out the salient provisions of R. A. No. 296 that have been amended by the above amendatory Act.

Court of Appeals shall have the same qualifications as those provided in the Constitution for members of the Supreme Court. The Presiding Justice of the Court of Appeals shall receive an annual compensation of sixteen thousand *pesos,* and each Associate Justice, an annual compensation of fifteen thousand *pesos.*

"SEC. 40. Judges of First Instance.—The judicial function in Courts of First Instance shall be vested in District Judges, to be appointed and commissioned as hereinafter provided: PROVIDED HOWEVER, That those who are District Judges at the time of the approval of this amendatory Act shall continue as such in their respective districts without need of new appointments by the President of the Philippines and new confirmations by the Commission on Appointments.

"SEC. 41. Limitation Upon Tenure of Office.—District Judges shall be appointed to serve during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office, unless sooner removed in accordance with law.

"SEC. 42. Qualifications and Salary.—No person shall be appointed District Judge unless he has been ten years a citizen of the Philippines and has practiced law in the Philippines for a period of not less than ten years or has held during a like period, within the Philippines, an office requiring admission to the practice of law in the Philippines as an indispensable requisite.

"The District Judge shall receive a compensation at the rate of twelve thousand *pesos per annum.*

* * *

"SEC. 51. Detail of Judge to Another District or Province.—Whenever a judge stationed in any province or branch of a court in a province shall certify to the Secretary of Justice that the condition of the docket in his court is such as to require the assistance of an additional judge, or when there is any vacancy in any court or branch of a court in a province, the Secretary of Justice may, in the interest of justice, with the approval of the Supreme Court and for a period of not more than three months for each time, assign any judge of any other court or province whose docket permits his temporary absence from said court, to hold sessions in the court needing such assistance, or where such vacancy exists. No judge so detailed shall take cognizance of any case when any of the parties thereto objects and the objection is sustained by the Supreme Court.

"SEC. 60. Division of Business Among Branches o Court of Sixth District.—In the Court of First Instanc of the Sixth District all cases relative to the registratio of real estate in the City of Manila and all matters in volving the exercise of the powers conferred upon th fourth branch of said court or the judge thereof in re ference to the registration of land shall be within th exclusive jurisdiction of said fourth branch and shal go or be assigned thereto for disposition according t law. All other business appertaining to the Court o First Instance of said district shall be equitably distri buted among the judges of the eighteen branches, i such manner as shall be agreed upon by the judge themselves; but in proceeding to such distribution the ordinary cases, a smaller share shall be assigned t the fourth branch, due account being taken of th amount of land registration work which may be re quired of this branch: PROVIDED HOWEVER, That at leas four branches each year shall be assigned by rotatio to try only criminal cases.

"Nothing contained in this section and in sectio sixty-three shall be construed to prevent the tempora designation of judges to act in this district in accordan with section fifty-one."

Section 2. Whenever the words "Judge-at-large" or "Cada tral Judge" appear in Republic Act Numbered Two Hundre and ninety-six, the same shall read "District Judge."

Section 3. All the present district judges shall contin as such, but if any district judge is commissioned for th Courts of First Instance of two provinces, and a separa district judge has been provided for herein for one of suc courts, the former shall have the option to select the cou over which he shall continue to preside and notify the Presiden of his selection within reasonable time. If the number branches in any Court of First Instance has been increase the district judge presiding over any branch thereof in a pa ticular place shall continue to preside over such branch no withstanding a change in its number under the provisions this Act.

All the existing positions of Judges-at-large and Cadastr Judges are abolished, and section fifty-three of Republic A Numbered Two Hundred and ninety-six is hereby repeale

Section 4. Any Judge-at-large or Cadastral Judge wh shall not be appointed as district judge by virtue of the pr visions of this Act, shall be given a gratuity in an amount one month's salary for each year of service of such Judge, th total amount not to exceed the salary for one year. Th sum necessary to carry out the provisions of this Act is hereb appropriated.

Section 5. This Act shall take effect upon its approval. [2]

EXPLANATORY NOTE

Perhaps no other recent act of legislation has touched off a more vital legal controversy than Republic Act No. 1186, otherwise known as the "Judiciary Revamp Act." That part of the Act which abolished the positions of Judges-at-large and Cadastral Judges has been assailed by not a few leading members of the Bar as *unconstitutional.* On the other hand an equal number of likewise renown legal minds has sustained its *validity.*

Whatever decision the Supreme Court ultimately pronounces with regard to the constitutionality of this law will doubtless establish a milestone in Philippine jurisprudence. The Supreme Court must decide how limited is the power of Congress to enact laws affecting judicial tenure of office.

For the interest particularly of members of the Bar as well as students of law, salient excerpts from the *Petition* filed in the Supreme Court by Attorneys Vicente Francisco, Amado Salazar and others in behalf of the Judges affected by the operation of the Act and challenging its constitutionality, as well as important portions of the *Answer* by Solicitor General Padilla in behalf of the Government, and sustaining the Act's validity, are hereinbelow set forth.

PETITION FOR DECLARATORY RELIEF AND/OR *MANDAMUS* [3]

ARGUMENT

I. CONGRESS DOES NOT HAVE THE POWER TO TERMINATE THE PETITIONERS' CONSTITUTIONAL TERM OF OFFICE BY ABOLISHING THEIR POSITIONS.

a) Article VIII of the Constitution provides in its Section 1, "The Judicial power shall be vested in one Supreme Court

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[2] Enacted without Executive Approval, June 20, 1954.
[3] Felicisimo Ocampo *et al,* Petitioners v. Solicitor General, Secretary of Justice *et al,* Respondents, G. R. No. L-7910.

and in such inferior courts as may be established by law." The following is therefore admitted: That only the Supreme Court is a constitutional court, and the office of Justice there of is a constitutional office; that Courts of First Instance left to be established by law are statutory courts, and the office of Judges, whether District-at-large or Cadastral, is a statutory office.

But from this, it does not and cannot follow that the Congress, having the power to create the office of Judge of First Instance, also has the power to abolish it at will when it is already filled, thereby legislating out the incumbent. For Section 9 of the same Article secures to all Judges of inferior courts a term of office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. That section reads as follows:

> "Sec. 9. 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. Until the Congress shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual compensation of sixteen thousand *pesos*, and each Associate Justice fifteen thousand *pesos*."

We agree that Sections 1 and 9 must be harmonized. But the harmony can not be achieved by sustaining the power of the Congress in the premises; for such an interpretation would entirely disregard the constitutional right to enjoy the full term, in favor of the congressional power to destroy it at will.

We also agree that the power to create an office, as that of a Judge of First Instance, generally carries the power to abolish it. But this is subject to constitutional limitations if any should exist. And such a limitation exists in the Constitution. An office of Judge of First Instance may be created and may exist for sometime without being filled. As to such an office, the congressional power of abolition can not be questioned, because no constitutional inhibition would be transgressed. But once such an office is filled, the constitutional term of its incumbent operates to deny to Congress the power to shorten that term by abolishing the office. We believe

this interpretation of the complementary provisions of the Constitution to be the most reasonable and sound. It is fortified by the settled rule of construction that the latter provision in point of local position is to be preferred in case of an apparent discrepancy between it and an earlier provision (*Montenegro v. Castañeda and Balao, G.R. No. L-4221*, August 13, 1952).

b) We are not unaware of the *concurring opinion* of Mr. Justice Laurel in *Zandueta v. De la Costa* (66 *Phil.* 615). We believe however that those who would sustain the validity of the challenged portion of Republic Act No. 1186 cannot derive any comfort from said opinion. We say this because, aside from the inherent weakness of a concurring opinion as a precedent, we believe that the reasoning supporting the conclusion therein reached as to the constitutionality of the ouster of Judge Zandueta was based more on expediency than on pure constitutional principles. What is more, the learned Justice, inspite of having played a leading role in drafting the country's fundamental charter, had not been able to point to any discussion on the floor of the Convention or to any competent source of authority supporting his opinion.

c) The United States Constitution, in its Article III, Section 1, reads:

> 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 offices during good behavior*, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office. (Italics supplied.)

While the American Federal Judicial System had been originally established since 1789 by the Judiciary Act of that year, and while in the early period of its life there had also been congressional attempts to go around the constitutional term of office of Federal Judges by the abolition of their offices, we are not aware of any decision of the Federal Supreme Court sustaining such a power.

But the question here involved has been passed upon by the highest courts in several of the states, in connection with

the removal by law of state Judges whose offices are usuall statutory but whose term is generally fixed in the state co stitutions. We have found that the state courts are even divided, some holding that the constitutional term may b terminated or shortened by the abolition of the office, an others holding that the same can not constitutionally be don We read the following passage on page 734 of Vol. 30 of th *American Jurisprudence*:

> *According to some courts, the legislature can no deprive a judge of his office or of the right to exer cise its duties before the expiration of his term as fixe by the Constitution, by abolishing the court or th judicial district to which he was elected; but there also authority to the contrary.* Statutes abolishin courts sometimes contain saving clauses to the effe that they shall not affect the tenure of the judges. (It lics supplied.)

The cases cited in support of the first proposition in th foregoing passage come from the Supreme Court of Indian and the Supreme Court of Pennsylvania, namely: *State rel. Gibson v. Firedly*, 135 *In.* 119, 34 *NE* 872, 21 *LRA* 63 *Com. v. Gamble*, 62 *Pa.* 343, 1 *Am. Rep.* 422. While th cases cited in support of the contrary doctrine come from th Supreme Courts of Kansas and Tennessee, namely: *Aikma v. Edwards*, 55 *Kan.* 751, 42 *P.* 366, 30 *LRA* 149 (by tran ferring all of the counties comprising a judicial district in another, and thereby abolishing such district); *McCully State*, 102 *Tenn.* 509, 53 *SW* 134, 46 *LRA* 567.

d) This Honorable Court is certainly not bound to ado anyone of these opposing doctrines. But we do say that th occasion affords the Court the most propitious occasion exercise the highest sense of judicial statesmanship of which know it is possessed, on a matter so vital to the administrati of justice.

It may be argued that the constitutional term of Judg attaches to a Judge only while his office exists; that if th be validly abolished, the term disappears; that the Congres being authorized to abolish or destroy it, and that having th power, it must necessarily have the power to terminate t term of the incumbent. It may also be argued that the Co gress, as the constitutional representative of the people, is n

under any duty to maintain the office of a Judge even after having found it to be useless or unnecessary, and that its finding on this matter must be deemed conclusive on the courts.

All these arguments, apparently plausible on their face, overlook the fundamental reasons behind the adoption of the rule securing to Judges the right to remain in office during good behavior until the age of seventy years. This security in term of office, as is well known to every student of constitutional law, is intended to give to those invested with the power to sit in judgment over the life, liberty and property of their fellowmen, that feeling of independence uninfluenced by none but their God and conscience.

When the Constitution was drafted by the Convention and when it was ratified by the people in 1935 no one could even suppose that a court or the office of a Judge created by law could ever become so unnecessary and useless as to warrant its abolition and the consequent removal of its incumbent. Since the organization of the Philippine Judiciary in 1901 under Act No. 136 of the Philippine Commission, up to the adoption of the Constitution in 1935, there was never an instance in which the lawmaking body had ever felt the necessity of abolishing a court or the office of a Judge for being useless or unnecessary. On the contrary, all the Reorganization Acts successively approved by the Philippine Legislature generally increased the number of courts or offices of Judges; and the last of them only maintained the existing positions.

But let us assume that a court or the office of a Judge becomes unnecessary for any reason; we still submit that the incumbent thereof is entitled to claim his constitutional term, even if he has to do nothing. Such a situation, if it should ever arise, should be left to his conscience and good judgment. The Constitutional Convention could not have feared that in such a situation the Judge involved could be capable of remaining in his office and enjoying the emoluments thereof, without resigning or otherwise retiring from the service.

The evils that could flow from a grant of legislative power to remove Judges by abolishing their offices can not be compensated by the highly remote advantage of saving a few thousand pesos a year from the funds that would otherwise go for the salary of a Judge whose office may not in fact be required by the public interest.

We, therefore, submit that upon reason and authority, th Congress violated the Constitution in abolishing petitioner positions or offices and terminating thereby their constitutiona term.

ANSWER[4]

* * *

ARGUMENT

* * *

2. CONGRESS HAS POWER TO ABOLISH INFERIOR COURTS, IN CLUDING THE EXISTING POSITIONS OF JUDGES-AT-LARGE AN CADASTRAL JUDGES.

The Petition quotes Art. VIII, Sec. 1 of the Constitution "that judicial power shall be vested in one Supreme Cou and *in such inferior courts as may be established by law* Sec. 2 of Art. VIII also provides that "the Congress shall ha the power to define, prescribe and apportion the jurisdictio of the various courts x x x." The positions of Judges-a large and Cadastral Judges originally provided for in Se 157 of the Revised Administrative Code, as amended, was r provided for in Republic Act No. 296, otherwise known as th Judiciary Act of 1948, in Sec. 53 thereof, which reads as fo lows:

> Sec. 53. *Judges-at-large and Cadastral Judges.* addition to the District Judges mentioned in Section fo ty nine hereof there shall also be appointed eighte Judges-at-large and fifteen Cadastral Judges *who sh not be assigned permanently to any judicial distri* and who shall render duty in such district or provin as may, from time to time, be designated *by the De partment Head.* (Italics supplied.)

Republic Act No. 1186 expressly provides for the aboliti of all the existing positions of Judges-at-large and Cadastr Judges and expressly repeals the above-quoted Sec. 53 of R public Act. No. 296.

[4] By the Solicitor General, Mr. Ambrosio Padilla.

a) *Judges-at-large and Cadastral Judges, like other Inferior Courts, are not constitutional but purely statutory.*

The Petition admits that "only the Supreme Court is a constitutional court, x x x that Courts of First Instance left to be established by law, are statutory courts, and the office of Judges, whether district, at large or cadastral, is a statutory office." Obviously, they are included in the term *such inferior courts as may be established by law* (Art. VIII, Sec. 1), and over said inferior courts, Congress shall have the power to define, prescribe and apportion their jurisdiction (Art. VIII, Sec. 2).

b) *Congressional power to create includes the authority to abolish.*

The Petition admits that "the power to create an office, as that of a Judge of First Instance, generally carries the power to abolish it." The only constitutional court which cannot be abolished by Congress is the Supreme Court. All other inferior courts, which are merely creatures of the legislative body, can be extinguished by their creator any time the latter deems it expedient for reasons of public interest. It is axiomatic that a power to create necessarily comprehends the authority to destroy.

> The power to repeal a law is as complete as the power to enact it. A legislature cannot, in and of itself, enact irrepealable laws or limit its future legislative acts. A legislative body, be it national or municipal, cannot bind or limit the discretion of its successors by removing something from their reach. Should this not be so, legislative power might, step by step, be diminished, and the most injurious consequences would result in the country. Its policy would become fixed and unchangeable on great national interests, which might retard, if not destroy, the public prosperity. (*Bloomer v. Stooley*, 5 *McLean* 158, *Federal Case No.* 1559.)

c) *Authority to reorganize the Courts of First Instance (Act No. 145) was upheld as constitutional.*

The constitutionality of C. A. No. 145, as amended so as to reorganize the Courts of First Instance, was challenged in

the case of *Zandueta v. De la Costa*, 66 *Phil.* 615. Although the majority opinion did not decide the constitutional issue squarely, and only held the petitioner therein as not entitled to his former position as Judge, the concurring opinion of Justice Laurel categorically upheld the constitutionality of said reorganization act.

> I am of the opinion that C. A. No. 145 in so far as it reorganizes, among other judicial districts, the Ninth Judicial District, and establishes an entirely new district, comprising Manila and the province of Rizal and Palawan, *is valid and constitutional.* This conclusion flows from the fundamental proposition that the *legislature may abolish courts inferior to the Supreme Court* and therefore may reorganize them territorially or otherwise thereby *necessitating new appointments and commissions.* Sec. 2, Art. 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 Sec. 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 v. New York*, 198 *U. S.*, 45; 49 *Law. Ed.* 937). (Italics supplied.)

The ruling in the case of *Zandueta v. De la Costa, supra* was followed in the case of *Summers v. Ozaeta* (G.R. No. L-1534, October 25, 1948), wherein this Honorable Court held that petitioner who was a Cadastral Judge and thereafter qualified for and assumed the position of Judge-at-large was no longer entitled to his former position, notwithstanding petitioner's argument

> that under Sec. 9, Art. VIII of the Constitution, he is entitled to continue as Cadastral Judge during good behaviour until he reaches the age of seventy years or becomes incapacitated to discharge the duties of said office; that the positions of Cadastral Judge and Judge-at-large are not incompatible and that, therefore, by the acceptance of the latter office he did not cease to be Cadastral Judge, especially where his *ad interim* appointment was disapproved by the Commission on Appointments.

d) *The power to abolish the Office of Justice of the Peace was clearly implied, if not expressly recognized, in the case of Brillo v. Enage.*

In the case of *Brillo v. Enage, G. R. No. L-7115, March 30, 1954*, which was a *quo warranto* proceeding involving the office of Municipal Judge of Tacloban City, petitioner was the Justice of the Peace of the Municipality of Tacloban while the respondent was the *ad interim* Judge of the Municipal Court of the City of Tacloban. The office of Justice of the Peace was changed to a Municipal Court by Republic Act No. 760, which converted the Municipality of Tacloban to the City of Tacloban. This Honorable Court held that the Court of Tacloban had not been abolished by said Republic Act No. 760. Accordingly, the office held by petitioner was not vacated to authorize the appointment of the respondent. In that case however this Honorable Court expressly recognized the right of Congress to abolish the position of Judge and such power could be exercised regardless of judicial tenure of office.

e) *The abolition of the Court of Appeals.*

The Court of Appeals was first created by C.A. No. 3. Before its creation, the only courts of superior jurisdiction were the Supreme Court and the Courts of First Instance. On March 10, 1945, President Osmeña by Executive Order No. 37 abolished the Court of Appeals by virtue of the powers vested in him by C.A. No. 671 (Emergency Powers Act). The executive order stated that "during the present emergency it is necessary in the interest of a more speedy administration of justice that the Court of Appeals be abolished in order that the cases heretofore appealable thereto may be appealed directly to the Supreme Court." On October 4, 1946, Republic Act. No. 52 was approved and took effect on the same date, recreating the defunct Court of Appeals by repealing Sections 145-A to 145-Q of the Revised Administrative Code with certain amendments.

f) *The abolition of the People's Court.*

The People's Court which was created by C.A. No. 682 was subsequently abolished by Presidential Proclamation No.

51 and concurred in by Congressional Resolution No. 32. The power of Congress to abolish inferior courts was likewise manifested. The same principle would apply to any and all other inferior courts which may be created by Congress and may likewise be abolished by it.

The creation, abolition and recreation of the Court of Appeals and the creation and abolition of the People's Court may be considered as a contemporaneous legislative construction of the phrase *as may be established by law* (Art. VIII, Sec. 1).

> In questions of constitutional construction and in the determination of the constitutionality of statutes great weight has always been attached to contemporaneous exposition of the meaning of fundamental law not only where such interpretation is that of the courts but also where it is that of other departments of government. (*Veteran's Welfare Board v. Rilley*, 189 Cal 159, 208 *P.* 678, 22 *ALR* 1531, 11 *Am. Jur.* 78, *p.* 697.)

* * *

4. PETITIONERS HAVE NO RIGHT TO AUTOMATIC APPOINTMENT AS JUDGES OF THE NEWLY CREATED DISTRICT COURTS.

Having admitted that the positions of Judges-at-large and Cadastral Judges are statutory courts, and therefore included in the term *as may be established by law*, and that congressional power to create an office carries the power to abolish it, petitioners have no valid objection to the passage of Republic Act No. 1186, which abolished such positions and repealed Sec. 53 of Republic Act No. 296. In fact, if petitioners were appointed to the new district courts, this petition would never have been filed. Their complaint therefore is predicated not so much on the abolition of the positions of Judges-at-large and Cadastral Judges but on the fact that they were not appointed to the new district courts, in alleged derogation of their status as Judges and their alleged right to judicial tenure of office (Art. VIII, Sec. 9, Constitution). In other words, Republic Act No. 1186 did not actually legislate them out of office but rather the appointing power disregarded their status and rights as Judges. It is submitted however that Congress could not have validly reserved the power to appoint them to their positions as Judges.

a) *The power of appointment is exclusively vested in the President.*

It cannot be doubted that the power of appointment is solely an executive function vested by the Constitution almost exclusively in the President. Art. VII, Sec. 10, Clause 3, provides:

> "The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments."

> The appointing power is intrinsically executive in nature. For this reason, the Constitution vests it almost exclusively in the President. The principle of separation of powers demands that it should be thus. Hence, no general appointing power is given to Congress by the Constitution. Congress has the power to create an office, but it has no authority to fill it. It may prescribe the qualifications of persons who may be appointed to a post of its creation but such qualifications should not be so detailed and particularized as to amount to naming a definite individual to fill the post. (*Sinco, Philippine Political Law*, 10th *Ed.*, *p.* 271.)

b) *Legislative appointment is unconstitutional.*

Had Congress inserted in Republic Act No. 1186 a provision for the reappointment or the automatic extension of the office of the petitioners as Judges in the newly created District Courts in disregard of the exclusive prerogative of the Executive to make appointments, such provision would amount to legislative appointment and therefore would be unconstitutional.

In the case of *Springer v. Government of the Philippine Islands*, 277 *U.S.* 189, involving the National Coal Company and the Philippine National Bank, wherein the appointments of directors were vested exclusively in a committee consisting of the Governor General, the President of the Senate and the

Speaker of the House of Representatives, the Federal Court held the same to be in derogation of the executive functions of appointment and therefore unconstitutional.

> Not having the power of appointment, unless expressly granted or incidental to its powers, the legislature cannot engraft executive duties upon a legislative office, since that would be to usurp the power of appointment by indirection; though the case might be different if the additional duties were devolved upon an appointee of the executive. *Shoemaker v. United States*, 147 *U.S.* 282, 300, 301, 37 *L. Ed.*, 170, 185, 186, 13 *Sup. Ct. Rep.* 361. Here the members of the Legislature who constitute a majority of the "board" and "committee" respectively, are not charged with the performance of any legislative functions or with the doing of anything which is in aid of the performance of any such functions by the legislature. Putting aside for the moment the question whether the duties devolved upon these members are vested by the Organic Act in the Governor General, it is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes logical ground for concluding that they do fall within that of the remaining one of the three among which the powers of government are divided. *Myers v. United States*, 272, *U.S.* 117, 118, 71 *L. Ed.*, 166, 167, 47 *Sup. Ct. Rep.* 21.

In the above case, the Executive was one of the three members of the Board with authority to appoint. With more reason then would legislative appointment be unconstitutional if the Executive were completely deprived of his exclusive constitutional prerogative to make appointments.

c) *Interference with the Executive's power of appointment.*

In the case of *Concepcion v. Paredes*, 42 *Phil.* 599, where the Judges of First Instance were called to Manila by the Secretary of Justice in order that they might "participate in a drawing of lots" for judicial districts, under the provisions of Act No. 2951, this Honorable Court held that:

> It is not within the power of the Philippine Legislature to enact laws which either expressly or impliedly diminish the authority conferred by an Act of Congress on the Chief Executive and a branch of the Legislature. Deliberately considered as a question of constitutional law, and putting to one side all irrelevant questions of expediency and of motive, we conclude that the power of appointment and confirmation vested by the Organic Act in the Governor General and the Philippine Senate is usurped by a lottery of judicial offices every five years. An independent and self-respecting judiciary must continue to exist in the Philippines.

* * *

6. Good Reasons of Public Interest Justify the Exercise of the Governmental Powers of the Legislative and Executive Departments.

It must be remembered that the legislative power to abolish inferior courts is not limited by any specific provision of the Constitution, much less by any applicable constitutional principle. The only possible condition to the valid exercise of that power is that contained in the warning expressed by Justice Laurel in the case of *Zandueta v. De la Costa, viz.*, that this Honorable Court will not hesitate to check the exercise of legislative power to reorganize the courts for the purpose of shielding an unconstitutional and evil purpose. It must always be presumed however that the compelling demands of public interest furnish the motivation for the exercise of congressional power to reorganize, increase or abolish inferior tribunals. This is all the more so in the face of the well-established principle of constitutional law that the reason for, or the wisdom of the means employed by Congress to effect, such reorganization or abolition, as well as the motive of Congress, are beyond judicial scrutiny; for the courts will not put its own judgment or wisdom against that of the legislature and will not inquire into the propriety or practicability of the measures employed in the exercise of powers that belong exclusively to Congress by constitutional conferment.

7. The Alleged Tenure of Petitioners Must Yield to the Power of Congress to Abolish and the Authority of the Executive to Appoint.

Justice Laurel, in his concurring opinion in the case of

Zandueta v. De la Costa, made the enlightening remark that "security of tenure is certainly not a personal privilege of any particular judge." Even granting *arguendo* that petitioners as Judges-at-large and Cadastral Judges enjoyed the tenure of office provided for in Art. VIII, Sec. 9 of the Constitution, and further granting *arguendo* that petitioners are covered by the term *all judges of inferior courts,* still such tenure of office must yield to the recognized constitutional power of Congress to abolish inferior courts and the authority of the Executive to appoint officials or judges.

> 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. *State ex. rel. Kenny v. Hudspeth* (1896) 59 *N.J.L.* 320, 36 *Atl.* 662, *affirmed in* (1896) 59 *N.J.L.* 504, 37 *Atl.* 67; *Holle v. State* (1898) 62 *N.J.L.* 363, 48 *Atl.* 1118. (*A.L.R.* 215-216).

The concurring opinion of Justice Laurel in the case of *Zandueta v. De la Costa* sustained the power of the Legislative Department under the Constitution to reorganize the Courts of First Instance as not affecting adversely the tenure of judges.

> 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 legal or constitutional principles 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 until 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.

a) *Security of tenure depends upon the existence of the office.*

In the case of *Kock v. Mayor of City of New York,* 152 *N.Y.* 72, 46 *N.E.* 170-174, the Court held that:

> Must the continuance in office of these petty judicial officers prevent the legislature from reorganizing the system of local criminal courts in the City of New York until January 5, 1904, when the term of the last incumbent would expire?
>
> The word *terms* as used in Sec. 22 refers not to constitutional, but to statutory, officers, justices of the peace excepted. It does not necessarily mean a tenure so fixed as to prevent the abolition of the office, but simply that the tenure, for the period fixed by the statute, continues, unless the office is abolished or the incumbent dies, resigns, or is removed. Inasmuch as the constitution does not attempt to regulate permanently the terms of these officers, the fair inference is that the term expires with the office, when that is abolished by the legislature. The destruction of the office naturally involves the official death of the officer. A construction making it impossible for the term of statutory officers to end otherwise than by lapse of time, when it might result in serious inconvenience and disorder, does not seem reasonable. Necessarily a term may expire otherwise than by lapse of its full period, as by the nonresidence or insanity of the incumbent, for instance. Probably no one would contend for such a literal construction as would continue in office a nonresident or an insane person, yet the result of holding that the legislature can abolish the office, but cannot dislodge the incumbent, is, as I view it, equally narrow and unsafe.
>
> This provision was adopted only out of caution lest a question might arise whether the general effect of the revision might not be to oust such judicial officers from their offices. It grew out of that overcaution common in constitutional and statutory revision. It was not meant to take away the power of the legislature over the offices and tenure of the police justices.