COMMENTS

HAS THE PRESIDENT POWER TO FIX THE DURATION OF SPECIAL SESSIONS?

by *LUIS G. SABATER* *

I. *The Constitutional Provision Involved.*

Section 9, Article VI of the Constitution of the Philippines is the constitutional provision involved in this question. It reads as follows:

> The Congress shall convene in regular session once every year on the fourth Monday of January, unless a different date is fixed by law. *It may be called in special session at any time by the President to consider general legislation or only such subjects as he may designate. No special session shall continue longer than thirty days* and no regular session longer than one hundred days, exclusive of Sundays.[1]

II. *History of Said Constitutional Provision.*

The said constitutional provision is almost identical to a portion of Section 18 of the Act of the Congress of

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[1] Italics supplied. Rules of the House of Representatives and Constitution of the Philippines, 1952, p. 51.

the United States of August 29, 1916, otherwise known as the Jones Law, which in turn was taken from Section 7 of the Act of the Congress of the United States of July 1, 1902, otherwise known as the Philippine Bill of 1902.

The pertinent portions of Section 7 of the Philippine Bill of 1902 read as follows:

> The Legislature shall hold annual sessions, commencing on the first Monday of February in each year and continuing not exceeding ninety days thereafter (Sundays and holidays not included) x x x.
>
> The Legislature may be called in special session at any time by the Civil Governor for general legislation, or for action on such specific subjects as he may designate. No special session shall continue longer than thirty days, exclusive of Sundays.[2]

The pertinent portion of Section 18 of the Jones Law reads as follows:

> The Legislature shall hold annual sessions, commencing on the sixteenth day of October, or, if the sixteenth day of October be a legal holiday, then on the first day following which is not a legal holiday, in each year. The Legislature may be called in special session at any time by the Governor-General for general legislation, or for action on such specific subjects as he may designate. No special session shall continue longer than thirty days, and no regular session shall continue longer than one hundred days, exclusive of Sundays. The Legislature is hereby given the power and authority to change the date of the commencement of its annual sessions.[3]

The complete draft of our present Constitution was prepared by a sub-committee of the Sponsorship Committee of the Constitutional Convention. The part of said draft relating to the power of the President concerning special sessions is Subsection 6, Section 12, Article XI, which reads as follows:

> 6. The President may, when the public interest so requires, convene both Houses, or either of them, in special session, *for a fixed period,* to consider matters of general legislation, or for action on such specific subjects as he may designate.[4]

[2] Public Laws, Vol. 1, p. 1059.

[3] Public Laws, Vol. 12, p. 244.

[4] Proceedings of the Constitutional Convention, Vol. XI, p. 6254.

The above-quoted draft, however, was not adopted by the Constitutional Convention, which instead adopted the following:

> The National Assembly shall convene in regular session once every year, on the second Monday of the month immediately following that on which the election of its Members was held, unless a different date is fixed by law. The National Assembly may be called in special session at any time by the President to consider general legislation or only such subjects as he may designate. No special session shall continue longer than thirty days and no regular session longer than one hundred days, exclusive of Sundays.[5]

There had therefore been no substantial change in the said provision when we returned to bicameralism.

III. *Power of the President Regarding Duration of Special Sessions.*

The above-quoted Section 9, Article VI of our Constitution enumerates the powers of the President regarding the special sessions of Congress. It grants to the President the power to call a special session at any time, as well as to determine whether Congress shall consider general legislation in such session or only such subjects as he may designate. *The power to fix the duration of special sessions is neither granted to the President in said section nor in any other provision of the Constitution.* Under the principle of *expressio unius exclusio alterius est*, the President has no power to fix the duration of special sessions.

> The rule of *expressio unius exclusio alterius est* may be used advantageously in some cases in determining whether a statute should be construed as mandatory or permissive. As applied in this connection the rule is that if a statute provides one thing, a negative of all others is implied.[6]
>
> Where a statute directs the performance of certain things in a particular manner, it forbids by implication every other manner of performance.[7]

[5] Subsection (3), Section 3, Article VI, Constitution of the Philippines of February 8, 1935, Public Laws, Vol. 30, p. 374.
[6] Sutherland Statutory Construction, 3rd Ed., Vol. 3, p. 117.
[7] State v. Hanson, 210 Iowa 773, 231 N. W. 428 (1930).

Section 9 provides that "No special session shall continue longer than thirty days and no regular session longer than one hundred days, exclusive of Sundays." The use of the word *continue* in this sentence is indicative of a clear intention on the part of the framers of the Constitution to deny to the President the power to fix the duration of a special session. This same section provides that Congress shall convene in regular session once every year on the fourth Monday of January, unless a different date is fixed by law. And because no law has fixed another date for convening Congress in regular session, Congress meets in regular session once a year on the fourth Monday of January; however, according to the above-quoted provision of our Constitution, no such session shall continue longer than one hundred days, exclusive of Sundays. A regular session begins from the opening or convening date and continues for not more than one hundred days. From the foregoing, may we not reasonably conclude that, because the Constitution fixes an opening date in the case of a regular session, its framers intended that the President should fix only the opening, starting or convening date in the case of a special session? This conclusion is further strengthened by the provision in the same section of the Constitution to the effect that "no special session shall continue longer than thirty days." If the intention of the framers of the Constitution had been to empower the President to fix the duration of a special session, the word *continue* would not have been used because that word would have been inappropriate and meaningless. Instead of the word *continue*, they would have used the simpler words *be* or *last*. For how can a special session *continue* when its full duration is already fixed? It is therefore clear from the provision of the Constitution under discussion that *what the President is empowered to do is not to fix the duration of a special session but to fix the opening date thereof.* An interpretation which would authorize the President to fix the duration of special sessions would render meaningless, and be in conflict with, the phrase in the said constitutional provision that "no special session shall continue longer than thirty days."

> If different portions seem to conflict, the courts must

> harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory.[8]

Furthermore, since the constitutional limitation of the duration of a special session is a limitation on the legislative power, it should be construed strictly. The Legislative power is vested by the Constitution in Congress. This power is broad and practically absolute, and where limitations upon it are imposed, they are to be strictly construed. Since, therefore, the Constitution has not expressly authorized the Chief Executive to fix the duration of special sessions, the President has no power to fix such duration.

> Legislative power, except where the constitution has imposed limits upon it, is practically absolute; and, where the limitations upon it are imposed, they are to be strictly construed, and are not to be given effect, as against the general powers of the legislature, unless such limitations clearly inhibit the act in question.[9]
>
> The test of legislative power is constitutional restriction; what the people have not said in their organic law their representatives shall not do, they may do.[10]

The great ordinances of our Constitution divide the functions of government into legislative, executive, and judicial. The making of our laws is entrusted to Congress, their execution to the President, and their interpretation to the Judiciary. Subject of course to constitutional limitations, Congress is the only and most competent body to determine how long a period of time is necessary for the faithful exercise of its legislative powers not only during regular sessions but also during special sessions. The determination of the time for the completion of legislative business is logically and reasonably an essential element of the legislative power. This is the reason why the Constitution grants to either House of Congress the power to adjourn at any time for not more than three days and, with the consent of the other House, to adjourn for more

[8] Cooley's Constitutional Limitations, 8th Ed., Vol. 1, p. 126.
[9] Baldwin v. State, 3 S. W. 109.
[10] State *ex rel* Cunningham *et al* v. Davis *et al*, 166 So. 289; Woodson v. Murdock, 22 Wall. 351, 22 L. Ed. 716.

than three days.[11] This power of Congress to adjourn for more than three days, when both Houses agree, virtually authorizes Congress to terminate a regular or special session at any time before the expiration of the maximum periods fixed therefor by the Constitution. It is practically a power to determine the duration of its regular and special sessions. An interpretation granting the President the power to fix the duration of special sessions would not only conflict with this express constitutional power of Congress to adjourn for more than three days if both Houses agree, but also violate the principle of separation of powers under our constitutional system. Such interpretation would consider the President as more competent to determine the time within which Congress should finish its legislative labors and would grant him a power that might destroy the deliberative nature of our representative institutions. On the other hand, an interpretation denying the President the power to fix the duration of special sessions would be in perfect harmony not only with the provisions of the Constitution, but also with the cardinal tenets of our constitutional system.

> Nor is it lightly to be inferred that any portion of a written law is so ambiguous as to require extrinsic aid in its constructon. Every such instrument is adopted as a whole, and a clause which, standing by itself, might seem of doubtful import, may yet be made plain by comparison with other clauses or portions of the same law. It is therefore a very proper rule of construction that *the whole is to be examined with a view to arriving at the true intention of each part;* and this Sir Edward Coke regards as the most natural and genuine method of expounding a statute. If any section of a law be intricate, obscure, or doubtful, the proper mode of discovering its true meaning is by comparing it with the other sections, and finding out the sense of one clause by the words or obvious intent of another. And in making this comparison it is not to be supposed that any words have been employed without occasion, or without intent that they should have effect as part of the law. The rule applicable here is,

[11] Subsection 5, Section 10, Article VI of the Constitution, reads: "Neither House during the sessions of the Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting." Rules of the House of Representatives and Constitution of the Philippines, 1952, p. 52.

> that effect is to be given, if possible, to the whole instrument, and to every section and clause.[12]

Furthermore, a construction of the constitutional provision under discussion which would authorize the President to fix the duration of special sessions implies that Congress does not perform its official duty regularly, an implication that is contrary to the established legal presumption that official duty is always regularly performed.[13]

Finally, the history of the constitutional provision under discussion points to a clear intention on the part of the fathers of our fundamental law to withhold the power to fix the duration of special sessions from the President. The pertinent provision regarding presidential power over special sessions, as contained in the complete draft of the Constitution prepared by the Sub-committee of the Sponsorship Committee of the Constitutional Convention, has already been quoted. Under the said draft, the President is *expressly* empowered to fix the period of a special session. But the draft was modified, *and the provision as adopted by the Constitutional Convention eliminated this power*. Is this not a clear and evident indication of the intention of the fathers of the Constitution to deny the President the power of fixing the duration of special sessions?

> Logically the events occurring immediately prior to the enactment of the statute ought to be a most lucrative source for information indicative of the legislative intent embodied therein. Therefore, the history of the measure during its enactment, that, during the period from its introduction in the legislature to its enactment, has generally been the first extrinsic aid to which courts have turned in attempting to construe an ambiguous act.[14]

An extensive search has been made by the members of the legal staff of the Legislative Reference Service of the House of Representatives for a single decision of a court of justice here and in the United States, sustaining the power of the Chief Executive to fix the duration of special sessions. The search has been fruitless. This question, therefore, seems to be one of first impression not only here but also in the United States, from which the constitutional provision under discussion originated.

[12] Cooley's Constitutional Limitations, 8th Ed., Vol. I, pp. 127-128.
[13] Subsection (m), Section 69, Rule 123, Rules of Court.
[14] Sutherland Statutory Construction, 3rd Ed., Vol. II, p. 484.

It may however be argued that contemporaneous executive interpretation of this constitutional provision in our country has been to the effect that the President can fix the duration of special sessions, considering the fact that some Governors General and all the past Presidents of the Philippines have at one time or another fixed the duration of special sessions called by them. In reply to this argument, we state that Governor General Frank Murphy and Acting Governor General Ralston Hayden, the latter a noted American political scientist, issued proclamations fixing only the convening date of special sessions and never fixed the duration of special sessions called by them during their incumbency.[15] Further, notwithstanding a very extensive research made to find a single proclamation of the President of the United States or of a governor of a state therein, fixing the duration of special sessions, none was found.

In the Constitution of the United States, the President is also empowered to call Congress to special sessions, and in most constitutions of the states of the American Union, the governor is likewise empowered to call the state legislature to special sessions.

The Presidents of the United States call Congress, or the Senate thereof, to special session by fixing only the opening date and time of such session. They have used a uniform form for calling such session, the pertinent portion of which is quoted as follows:

> NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene at the Capitol in the City of Washington on Monday, the twenty-sixth day of July, 1948, at twelve o'clock, noon, of which all persons who shall at that time be entitled to act as members thereof are required to take notice.[16]

[15] See Proclamation No. 680, issued by Governor General Frank Murphy on April 12, 1934; Proclamation No. 810, issued by Acting Governor General Hayden on June 5, 1935; and Proclamation No. 860, issued by Governor General Murphy on November 7, 1935.
[16] Proclamation of President Truman of July 15, 1948, United

As to whether or not state governors in America fix the duration of special sessions, our search was directed toward discovering such proclamations or descriptions of such proclamations in the voluminous tomes of American jurisprudence.

In the state of Texas, all the proclamations that were found fixed only the convening date of special sessions, and not the duration thereof. It is interesting to note that the provisions of the Constitution of Texas with respect to special sessions are almost identical to those of our Constitution. Sections 5 and 40, Article III, of said Constitution, read as follows:

> The Legislature shall meet every two years, at such time as may be provided by law, and at other times when convened by the Governor.[17]
>
> When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.[18]

The case of *Manor Casino et al. v. State*[19] quoted in full a proclamation issued by the Governor of Texas, calling the Legislature of Texas to meet in a special session on April 16, 1888, without however fixing the duration thereof.

In the State of Nebraska, a proclamation was issued by the acting governor which fixed only the convening date of a special session.[20] Likewise in Missouri, a proclamation

States Statutes-at-Large, 80th Congress, 2nd Session, 1948, Vol. 2, p. 2573. See also Proclamation of President Theodore Roosevelt of February 25, 1909, U. S. Statutes-at-Large, 60th Congress, Vol. 35, Part 2, p. 120; Proclamation of President Wilson of March 17, 1913, U. S. Statutes-at-Large, 65th Congress, Vol. 40, Part 2, p. 1645; Proclamation of President Harding of March 22, 1921, U. S. Statutes-at-Large, 67th Congress, Vol. 42, Part 2, p. 2234; Proclamation of President Hoover of July 3, 1930, U. S. Statutes-at-Large, 71st Congress, Vol. 46, Part 2, pp. 3027-3028; and Proclamation of President Hoover of February 14, 1933, 72nd Congress, Vol. 47, Part 2, p. 2555.

[17] Section 5, Article III, Constitution of Texas, Vernon's Texas Statutes, Vol. I, p. 198.

[18] Section 40, Article III, Constitution of Texas, Vernon's Texas Statutes, Vol. I, p. 223.

[19] 34 S. W. 769.

[20] People *ex rel.* Tennent v. Parker, 3 Neb. 409.

by the governor fixed only the opening date of the special session.[21]

In the State of Tennessee, Governor Hooper on August 29, 1913 issued a proclamation calling the members of the 58th General Assembly of the State of Tennessee "to convene in extraordinary session in the Capitol at Nashville on Monday, September 8, 1913, for the purpose of considering and acting upon the following matters of legislation. x x x." [22]

From the foregoing, it is evident that the practice in the federal and state governments of the United States, from which the provision of our Constitution in question originated, is for the Executive to call special sessions by fixing the convening or opening date, and not the duration thereof. We reiterate that we have not found a single instance of an Executive in the United States fixing the duration of a special session. In view of this, it is submitted that the contemporaneous construction given by our past Executives to this constitutional provision cannot have much weight. This is more so because the Executive construction, which is a strange departure from, and a reversal without basis or precedent of, the uniform Executive construction of similar provisions of fundamental laws in the United States, might have been the result of psychological reaction against the *mañana habit* in the early days of representative government in the Philippines. It is also possible that the pro-consuls of America here during our years of dependency might have believed that the transfer of political autonomy to our people be gradual, not to say that it was human nature on the part of our past Executives to desire and exercise power. Finally, the practice among past Executives has not been uniform because, as we saw earlier, Murphy and Hayden never fixed the duration of special sessions.

IV. *Summary and Conclusion.*

The President of the Philippines has no power to fix

[21] State *ex rel.* Rice v. Edwards *et al.*, 241 S. W. 945.

[22] State *ex rel.* National Conservation Exposition Co. v. Woolen, State Comptroller, 161 S. W. 1006. See also Jones v. State, 107 S. E.

the duration of special sessions for the following reasons:

(1) Section 9, Article VI of our Constitution, enumerates his powers concerning special sessions, and its failure to grant him the authority to fix the duration of special sessions is a denial of such power under the principle of *expressio unius exclusio alterius est.*

(2) The phrase "no special session shall continue longer than thirty days," contained in the aforesaid section, has meaning if the President fixes only the convening date of a special session. It is meaningless if the President fixes its duration. It is a principle of constitutional construction that constitutional provisions should be harmonized to give meaning to every word therein.

(3) The constitutional provision limiting the maximum duration of special sessions is a limitation on legislative power, and it is a principle of constitutional construction that it should be construed strictly. Such strict construction logically favors a denial of any implication authorizing the President to further limit such legislative power by fixing the duration of special sessions.

(4) An interpretation sustaining the power of the President to fix the duration of special sessions is (a) repugnant to the express power of Congress to adjourn for more than three days should both Houses agree, which latter power virtually grants Congress the power to terminate or fix the duration of its regular and special sessions, subject of course to the maximum periods of duration of such sessions as prescribed by the Constitution, (b) contrary to the cardinal principle of separation of powers, and (c) destructive of the deliberative nature of our representative institutions.

(5) A construction favoring presidential determination of the duration of special session implies that Congress does not perform its official duty regularly, which implication is contrary to the legal presumption that official duty is always regularly performed.

(6) The grant to the President of the power to fix the duration of special sessions in the draft submitted by the sub-committee of the Sponsorship Committee of the Constitutional Convention, and the elimination of such power in the Constitution as finally adopted, is a clear indication of the intention of the framers of the Constitution to deny him this power.

765; Carroll vs. Wright, 63 S. E. 260; State *ex rel.* Ach. *et al.* v. Braden *et al.*, 181 N. E. 138.

(7) The argument that contemporaneous executive construction given in our country to said provision upholds the power of the President to fix the duration of special sessions because some Governors General and all the past Presidents of the Philippines had at one time or another fixed the duration of special sessions, loses force when it is taken into account that Governor General Murphy and Acting Governor General Hayden did not follow such practice.

(8) The uniform practice in the United States, the place of origin of the constitutional provision under discussion, has always been for the Presidents of the United States and state governors to fix only the convening date and not the duration of special sessions.

COMPULSORY ARBITRATION AND THE *MAGNA CHARTA* OF LABOR *

by *JUDGE JOSE S. BAUTISTA* **

The Bill[1] alluded to is both good and laudable insofar as it aims to promote industrial peace by reinforcing trade unionism as well as to adjust between unions and employers the process of collective bargaining.

* During the congressional deliberations that preceded the passage of what is now popularly known as the *Magna Charta* of Labor, the Hon. Quintin Paredes, then President *Pro Tempore* of the Senate, requested the author of this paper to render an opinion respecting the provisions of Senate Bill No. 423, later passed as Republic Act No. 875. The opinion was originally written in Spanish.

** Court of Industrial Relations.

[1] Senate Bill No. 423, now Republic Act No. 875.

However, the proposed law scuttles compulsory arbitration and the power of the Court of Industrial Relations to decide disputes involving working conditions. In this respect the Bill, far from protecting labor, is in the last analysis favorable to Capital alone.

Compulsory arbitration has been eliminated because it is looked upon as an undue restriction of the exercise by Capital and Labor of free enterprise, thereby giving rise to the insinuation that the method for regulating employer-laborer relations through collective bargaining [2] is democratic, while that through compulsory arbitration undemocratic.

The latter method is as democratic as the former.

The Filipino people, by their approval in a plebiscite of our Constitution which declares: "The state may provide for compulsory arbitration,"[3] have clearly sanctioned the establishment of compulsory arbitration by the enactment of a law[4] dictated under the force and authority of that Constitution.

Free enterprise in the world of business is nothing more than competition, a contest between Capital and Labor. Fostered by any given opportunity, absolute unrestrained economic liberty inevitably will bring about the triumph of the strong over the weak.

Against the superior material and educational resources of Capital, the efforts of the ill-provided laborer are futile. It must therefore seem that protection of the weak is the sanction to liberty. Otherwise, there can be no true liberty. Under rightful circumstances, the Government owes to no laborer its protection and aid. But when that laborer becomes powerless to prevent or curb the abuses that are heaped on him, the Government must step in and furnish him that protection and aid. Since therefore our labor unions are still in their incipient stages of formation, the necessity for the passage of Commonwealth Act No. 103[5] becomes understandable.

[2] See Section 12, Republic Act No. 875.
[3] Section 6, Article XIV, Constitution of the Philippines.
[4] Commonwealth Act No. 103.
[5] Commonwealth Act No. 103, as amended, is entitled, "An Act to afford protection of labor by creating a Court of Industrial Relations empowered to fix minimum wages for laborers and maximum rentals to be paid by tenants, and to enforce compulsory arbitration between employers or landlords, and employees or tenants, respectively; and by prescribing penalties for the violation of its orders."

In order then that the contest or fight be fair, it is essential that the strength of the combatants be equal and their weapons bear a proportion one to the other. Under any other condition, the weak is bound to be crushed. It therefore becomes opportune for us to ask: Can the Filipino laborer carry on the fight? How does he actually stand? How does his personal and social condition compare with that of his American counterpart?

In our country the following facts are evident:

(1) The great majority of Filipino laborers is scattered and disunited. Only ten per cent (10%) of city laborers have banded themselves into unions. With the sole exceptions of Negros Occidental and Pampanga, there exists no real rural organization among the farmhands of the country.

(2) Even among members of the few legitimate labor organizations, a lack of solidarity and sense of responsibility is apparent; there is a dearth of interest in, and zeal for, the cause of the union. Such a state of affairs breeds mass defections, thereby superbly enabling an employer to maneuver the union as fits his fancy: now changing its officers, now exercising in a thousand and one ways his indisputable influence over its members. In many cases that have come to our attention in court, we have noticed laborers abandon their union to take their employers' side even against the just demands of their own unions, and then rejoin the same after the latter have obtained a favorable decision: no doubt to share in the gain.

(3) Due to a dismal lack of responsibility and interest, only a limited few pay the fees prescribed by union rules. Many unions have no funds to meet their minimum expenses. And to aggravate matters, many employers refuse to adopt the "check off" system in order that, being in dire need of funds, the union's hands are tied and prevented from bringing action against them. In many of the strikes in the City of Manila, strikers have had to live on the charity of generous persons and institutions.

In this matter of strikes may we mention in passing that a large segment of the Filipino people are of a colonial mentality. Far from sympathizing with the strikers' cause or at least inhibiting themselves from taking sides in the conflict, as people in other countries inhibit themselves, they somehow favor the employer. Thus, we witness the general public continue to patronize strike-stricken moviehouses, stores, shops and transportation companies. This is merely one aspect of the matter.

Another aspect concerns powerful employers who in many instances avail themselves of the services of the police to break up picket lines, or to escort scabs into the sanctuary of the factory, thereby frustrating or defeating the purpose of the whole movement.

Forlorn and all alone, without judicial protection, the laborer must face the abuses of the free enterprise system.

(4) If there are no "company unions" in the United States, in the Philippines they are legion. And if by the term "company union" we mean that which, in its formation and administration, is aided and abetted by the employer, then in truth we can say that there are more "company unions" than legitimate labor unions in our country.

(5) In Manila and other cities, jobs at present are scarce and the jobless multitudinous. Farm laborers from the provinces worsen matters by emigrating to the cities or suburbs thereof. And what situation is brought about? Due to over-abundance of labor in the cities, industrial wages drop; the depletion of farm labor causes agricutural costs to spiral upwards, and with them the cost of living. We have therefore no healthy balance between industrial wages and the cost of living. The social disorder thus continues and nothing is gained by hiking industrial wages in population centers while the cities continue to siphon farm labor.

These then are a few of the aspects of the peculiar condition of the Filipino laborer. This condition will become truly pitiful if compulsory arbitration is suppressed. Without judicial power to decide disputes, no court will be able to stop strikes, which will multiply; since there will be no judicial authority to order a return to work, strikes will be long, costly and violent, like those in the United States. The situation will serve as an ideal basis for the growth of Communism here.

It has been observed that in all cases wherein the Court of Industrial Relations has not acted or has refrained altogether from issuing a back-to-work order, the employer has invariably triumphed and succeeded in dissolving the union or in converting it into a "company union." This fact distinctly demonstrates that, as Filipino unionism now stands, the union, left on its own in the field of unlimited competition, cannot survive.

With reference to dismissal cases, the Filipino laborer is better protected by Commonwealth Act. No. 103, as amended, than his American counterpart. In the United States the laborer may be dismissed by the employer for any reason other than for "union activities" or "unfair labor practices." In this country dismissal is possible only upon the concurrence of a "just cause."[6]

In other words, the American working man can ask for readmittance to his job only if he has been ousted on account of having engaged in union activities. In this country reinstatement can always be asked when there exists no "just cause" for dismissal. Likewise, in the United States the burden of proof that the dismissal was by reason of union activities devolves upon the worker, a difficult task since it consists in proving what are intimately subjective matters, such as the intent and designs of the employer, which the latter can easily conceal or disfigure. Here the *onus probandi* that a just motive exists weighs on the shoulders of the employer. Unless therefore the employer can prove the existence of a just cause, the dismissed employee will be entitled to reinstatement.

The exclusive basis for a sincere social order is the imparting of justice supplemented by the virtue of charity. That is why the very law which affords protection to the worker categorically commands that the Court of Industrial Relations "shall act in accordance with justice and equity and the substantial merits of the case."[7] There is

[6] Section 19, Commonwealth Act No. 103, as amended.
[7] Section 20, Commonwealth Act No. 103, as amended.

no substitute for justice and equity. So long as no other formula is found which can prevent litigations and dissolve conflicts, and as long as there exists one citizen who can, with dignity and honor, administer justice, the jurisdiction of the Court of Industrial Relations to decide and settle conflicts should not be withdrawn.

I must admit that the Industrial Court is not perfect; that it has failed to establish a social jurisprudence notwithstanding the time that has elapsed; that it has stumbled into grave errors. But the principles and objectives which have breathed life into that Court will outlast and outlive everything that is transitory and accidental. Rectify the errors; change the judges, if need be, but save the principles.

With profound reverence for the memory of President Quezon, I conclude these lines with the words[8] of that great apostle of Social Justice:

> That our laborers in the farm as well as in the factories still suffer from long-standing unfair practices, no one can successfully deny. These injustices, however, cannot be remedied by merely applying here legislation in force in other countries. For such legislation would not take into account local conditions nor the incipient stage of our industrial life and the almost primitive state of our agriculture. Government administration is a practical question and statesmanship consists in the wise application of sound doctrines, bearing in mind the actual conditions that have to be met with in each case. Even the most up-to-date progressive labor legislation, if not in keeping with prevailing conditions here, may easily upset our existing industries, prevent the establishment of new ones, and retard the advance of our agriculture. I, therefore, advocate a policy of progressive conservatism based upon the recognition of the essential and fundamental rights of labor.[9]

[8] Delivered at the Opening of the First Session in the Assembly Hall, Legislative Building, Manila, June 16, 1936.

[9] Messages of the President, Vol. 2, Part I (Revised Edition), p. 161.

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