

PHILIPPINE LAW JOURNAL

Vol. VIII

JANUARY, 1929

No. 7

THE NECESSITY OF ESTABLISHING A COURT OF CLAIMS IN THE PHILIPPINES

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PRELIMINARY STATEMENT

The Doctrine of Sovereign's Immunity—It is a familiar doctrine of the common law of England that the Sovereign, the King, cannot be sued in his own court without his consent. This doctrine which shields the Sovereign with absolute immunity is founded on the ground of public policy. It is obvious that if another rule is followed the Sovereign head of the nation would be continually exposed to great inconvenience and danger. Public policy, therefore, requires that the supreme authority of the state should not be subjected to suit at the instance of every citizen. Another reason advanced to uphold this doctrine of the Sovereign's immunity is the absurdity of the King's sending a writ to himself to command the King to appear at his own court. This absolute rule, however, has yielded to some modification in order to remedy the grave wrong and positive injustice it has wrought upon the rights of the people who have just claims against the government. Under the Petition of Right private citizens of England can now sue their King provided his consent is first obtained thru petition presented to him. Authority of Chief Baron Comyn 1 Dig. 132, action c 1 & 6 Dig. 67. Prerogatives and of the Mirror of Justice ch. 1 sec. 3 & ch. 5; sec. 1 Authority of Bracton & Lord Holt.

In the United States this fundamental principle which exempts the sovereign from being sued in courts unless with its consent has been adopted, together with its incidents, by the American courts as a part of the general doctrine of publicists that the supreme power wherever it may reside in a state shall never be compelled by process of courts of its own creation to defend itself from assault in those courts. This is predicated upon broader reason than those advanced by English authorities for its support. The difference of the system of government of each of these nations should be taken into consideration. As has been observed by Justice Gray in the case of *Briggs vs. The Light Boats*, 11 Allen 162, "it would be inconsistent with the

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very idea of supreme executive power and would endanger the performance of public duties of the sovereign to subject him to repeated suits as a matter of right at the will of any citizen and to submit to the judicial tribunals the control and disposition of his public property, his instruments of government." Field, J. in the *Siren* (1869) 7 Wall. 152, 154; 19 L. ed. 129, 130. *Briggs vs. Upper Cedar Point* (1865) 11 Allen (Mass.) 157, 162; and Davis, J. in *Nichols vs. U. S.* (1869) 7 Wall. 122, 19 L. ed. 125.

The absurdity of the King's sending a writ to himself to command himself to appear before his own court does not exist in the case of the United States for the writ may be issued by the President and served upon the Attorney General who is bound personally or by representation to appear and defend the government in the court. *The Davis*, 10 Wall. 15 (77 U.S. XIX 875).

In the early history of the courts of the United States this old doctrine met with doubtful reception (See opinion of Justice Wilson in the case of *Chisholm vs. State of Georgia*, Justice Jay in 2 Dall. 461) but Chief Justice Marshall recognizing the supreme necessity of the rule gave his assent and laid down the principle that a sovereign independent state is not suable except by its own consent. Established in *U. S. vs. Clarke*, 8 Pet. 436, *Same vs. McLemore* 4 How. 286; *Hill vs. U. S.* 9 How. 386; *Nation vs. Johnson* 24 How. 195; *The Siren* 7 Wall. 152. *The Davis* 10 Wall 15. But in all these cases the doctrine is followed but not reasoned.

In the Philippines such immunity has never been granted the Philippine Government by any express Congressional act. The States of the Union are well protected by the Constitution. Similar guarantees had not been given to the territories of the United States. But the Supreme Court of the United States, speaking thru Mr. Justice Holmes in the case of *Hawaii and Porto Rico*, laid down as a rule that the "government established in those territories come within the general rule exempting a government sovereign in its attributes, from being sued without its consent." So by analogy the Government of the Philippine Islands also comes within the general rule exempting a state from suit without its consent. Reasons of public policy operate here as strongly as elsewhere. "It can not be presumed," Justice Malcolm wisely said, "that the Congress intended to permit the destruction of a government which it went to such pains to set up by allowing private parties to sue it without its consent." In a decision of the Supreme Court this doctrine was upheld in its entirety. The court observed that "all admit that the insular government (defendant) can not be sued by an individual with-

out its consent." *Merritt vs. Government of the Philippine Islands*, 34 Phil. 311. So that in this jurisdiction both on principle and authority following the doctrine established in England and in the United States, it is laid down as a fundamental rule that the Philippine Government could only be sued by private parties with its consent.

I—HISTORY OF THE COURT OF CLAIMS

1. *Origin and Nature*—A court of claims as known in American law and in American judicial system is purely of American origin. Way back in the middle of the 19th century, the United States Congress, feeling the necessity of relieving itself of the trouble and inconvenience of enacting a law every time a private individual presents a just claim against the United States Government, enacted a law on February 24, 1865, creating a special body, a sort of special court to hear, determine, and adjudicate certain class of claims referred to it by either the United States Congress or by the Executive Branch of the Government. Federal Statutes Annotated Vol. X, Appendix Jan. 1, 1906, Vol. 2 Federal Statutes p. 55. *Schilinger vs. U. S.* (1894) 155 U. S. 166; *Gordon vs. U. S.* (1864) 2 Wall (U. S.) 561; *U. S. vs. Lee* (1882) 106 U. S. 196; *Langford vs. U. S.* (1879) 101 U. S. 345; *Chickasaw Nation vs. U. S.* (1887) 22 Ct of Cl. 222; *Klein's Case* 7 Ct. of Cl. 249.

This court is known as the United States Court of Claims. At first its jurisdiction was limited to only a few class of claims against the United States Government, but by subsequent Congressional enactments additional specified claims were added to those already granted. Congressional Act of March 3, 1863, 12 Statute at L. 765; Act of March 3, 1887, 24 Statute at L. 505. Tucker Act, 24 Statute at L. 505; Bowman Act, Act of 1891, 26 U. S. Statute at L. 851.

As has been said this body is a special court constituted for a special purpose. It has powers to provide rules for its own procedure. It has no appellate jurisdiction but its judgments and decisions may be revised and annulled or reviewed by the United States Supreme Court on appeal to the latter body.

2. *Its Organization and Functions*—The Court of Claims of the United States is composed of 5 judges appointed by the President with the advice and consent of the United States Senate. It has one chief justice and 4 members. They hold office during good behavior.

They hold their sessions at Washington once a year on the first Monday of December to hear, determine, and decide cases

referred to them by the United States Congress or by the Executive Branch of the Government. The session of the Court lasts as long as its business demands.

3. *What Claims come under the Jurisdiction of the Court of Claims*—Only claims expressly designated by the United States Congress in the law is heard and determined by this Court. The following claims come under its jurisdiction:

First Group:

(1) Claims founded upon the Constitution of the United States or any law of Congress, except for pension.

(2) Claims upon any regulations of the Executive Branch of the United States Government.

(3) Claims upon any contract, expressed or implied, with the Government of the United States.

(4) All claims which may be referred to it by either of the two Houses of Congress. Sec. 1059 Fed. Statute.

Second Group:

(1) All set-offs, counterclaims by private party or the United States Government.

(2) Claims for damages, liquidated or unliquidated.

(3) Or any demand whatsoever on the part of the Government of the United States against the claimant.

Third Group:

(1) Claims of any paymaster, quartermaster, commissary of subsistence or other disbursing officer or his administrator or executor for relief from responsibility on account of capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge and for which such officer is held responsible. Act 1866. 14 U. S. Stat. at L. 44.

Fourth Group:

(1) All claims for the proceeds of captured or abandoned property as provided by Act of March 12, 1826. Chapter 121—An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts of the United States.

Fifth Group:

(1) Claims for property of citizens of the United States taken or destroyed by Indians without just provo-

cation on the part of the victims. Act of 1891. (26 U. S. Statute at L. 851).

(2) French Spoilation Claims prior to Sept. 1860.

(3) Spanish War Claims.

4. *Its Procedure*—Claims before this Court may be prosecuted in two ways:

First, Claims against any Executive Branch of the United States Government involving disputed facts or controverted questions of law in which the amount exceeds \$300, or the decision affects class of cases or furnishes precedents,—in such case the Department concerned may cause such claim, with all vouchers and papers, proofs and documents, to be transmitted to the Court of Claims, and same shall be proceeded as if it originally commenced by the voluntary action of the claimants. The limitation set by the law is that such claims must refer only to classes of cases which are included to be under the jurisdiction of said Court. Federal Statute Sec. 1063.

Second, When the claim is presented before a committee of the Senate or House of Representatives, or before either House of Congress, involving investigation and determination of facts, the committee of the House may cause the same, with vouchers, papers, proofs, and documents to be transmitted to the Court of Claims of the United States.

Congress may also refer bills, except for pension, to this Court providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person. The Court will only restrict itself to examining the relief stated in the bill.

As soon as the Court opens its session it may begin to hear, determine, and decide cases referred to it. The claimant appears before it to prove his claim and the Government is represented by the Attorney General or his deputy. The rules of usual procedure in the ordinary court are followed. It may refer the finding of facts to a body or commission which in turn hears proofs and evidence presented by the parties. This commission reports back the case to the Court of Claims for determination.

After the Court renders its decision it can not be reviewed either in the Executive Department from which the claim originally came, or in the Congress. But an appeal of its decision may be taken to the United States Supreme Court. *Palmer vs. U. S.* (1890) 20 Ct. of Cl. 28; *U. S. vs. O'Grady* (1874) 22 Wall. (U.S.) 641. As soon as the decision has become final the clerk of the Court of Claims sends a copy of the same to the Executive De-

partment or to the Congress depending as from where the claim was originally presented by the claimant and the Congress shall make the necessary appropriation to settle the judgment. If no appropriation has been made for this purpose, the judgment or decree shall be paid in the same manner as other judgments of the court are settled. Act of June 25, 1868, ch. 71, 15 Statute at L. 76. The presentation of these claims decided by the Court of Claims shall be made at every opening of the session of the Congress.

Just as in the ordinary courts, claims unless presented within 6 years after the action accrues by filing either before the Congressional Committee or the Executive Department, will not be entertained by the Court.

II—THE PRESENT SYSTEM OF ADJUDICATING PRIVATE CLAIMS AGAINST THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

1. *During the Spanish Regime.*—The history of the judicial system of Spain in these Islands for the last 300 years does not give any evidence of the fact that any court similar to the Court of Claims of the United States has ever been established here. This does not necessarily mean the absence of any private claim against the Spanish Government. Much less can this silence be construed as signifying that private claims have not been entertained and settled by the Spanish Government in accordance with law and justice. Near the close of the Spanish regime there was a body called "Contencioso-Administrativo" court of law, a branch of the administration which may suggest a remote idea of the Court of Claims under discussion. This body was established by a Royal Decree of September 13, 1888, and applied to these Islands by another Royal Decree of November 23, 1888. This court was more administrative in nature than judicial. Its function consisted in settling private claims and disputes against the government regarding the lease or sale of public lands. Phil. Census Vol. 1, 1903, page 404; *Millat vs. Attorney General*, 1 Phil. 159; *Antipolo vs. Cainta* 2 Phil. 204; *Raura vs. Insular Government* 8 Phil. 214.

It is a representative court composed of 1 president, 2 judges taken in turn from the audiencia, and 2 administrative magistrates. By a Royal Decree of June 3, 1896, the membership was reduced to 1 president and 3 magistrates. Final decision of this court is appealable only to the council of state of Spain.

2. *From the American Occupation to March 16, 1923.*—The coming of the Americans to these Islands which occasioned

the implantation of the American Government and laws has changed the political organization established by their predecessors. General Orders were issued by the military authorities which, together with congressional enactments, acts of the Philippine Commission, and the Philippine Legislature, have completely changed the political body and judicial system in these Islands. Ordinary and special courts have been established, but unfortunately the creation of a court of claims has been left to the initiative of posterity.

When the American system of government has been implanted here it carried with it all the necessary powers and incidents essential to its existence. One of these is the doctrine that the Government of the Philippine Islands can not be sued by private parties without its consent.

It is true that certain claims by private individuals against the Government, such as, the recovery of taxes and customs duties improperly or illegally collected, could be made thru the administrative branch of the Government. Claims upon real property are either settled in the ordinary or special courts. But there are instances in which private claimants who have a justiciable claim against the Philippine Government has to abandon their claim because no adequate remedy or effective means is provided by our laws. The present law is too narrow in the sense that only moneyed claims arising from contract could be the subject of a suit against the Government. Before the passage of Act 3083, the usual procedure was to petition the Philippine Legislature for an authority to sue the Government. The consent was given in the form of a special law. If the claim is allowed a special appropriation is made in the budget for the preceding year. If the sum needed is not set aside by the Legislature, no provision is made as to how the claim could be satisfied.

3. *Procedure Under Act 3083.*—Under the old system a separate legislative enactment is necessary for each claim against the Philippine Government. This procedure, however, has been changed with the passage of Act 3083 on March 16, 1923.

This Act was originally introduced in the Lower House at a Special Session of the Philippine Legislature in the year 1923, by Honorable Clementino Diez, Representative from Surigao. After several amendments of minor importance have been incorporated into the original draft, the bill was approved on February 17, 1923. Then it was sent to the Upper House and approved on the same date it was presented for discussion, that is, on March 16, 1923.

Representative Diez, the author of the bill, in explaining his object in introducing the measure, said that it was his purpose:

“Eliminar los engorros y dificultades de los procedimientos actuales y evitar el que en cada caso particular la Legislatura tenga que dictar una ley especial para autorizar a tal o cual persona en formular acción contra el Gobierno.”

(See unbound report of *Diario de Sesiones de la Camara Baja*)

It was thought proper by the author to pass the bill having in mind probably the many inconveniences, delays and difficulties a claimant has to suffer before he can get his relief. For as the author said: “the claimant will not have to wait until the Legislature opens.” This is indeed a great improvement upon the old method for it could not be denied that if the relief sought is not granted in time, the remedy provided falls short of its mission.

Let us study Act 3083 in detail. It is composed of 9 sections. The first section prescribes the condition under which a private party may sue the Government. First, he must have a moneyed or pecuniary claim involving a liability arising from a contract express or implied which could serve as basis of civil action between private parties. Second, he must have first presented his claim to the Insular Auditor and the latter did not allow or reject it within 2 months after presentation of his claim to him. If these conditions are fulfilled the claimant can go to the Court of First Instance of Manila or that of the province where he resides, at his option. Sec. 3, Act 3083. Vol. 18 Public Laws. In the same action the Government of the Philippine Islands or the private party has a right to assert set-offs and counterclaim against the other party just as in private action between parties. Sec. 5, Act 3083.

Section 6 provides that a successful claimant is not entitled to execution of the judgment to his favor. Within 5 days after judgment has become final, the clerk of court should transmit the same to the Governor-General, who in turn shall send the same to the Philippine Legislature at the commencement of its session for appropriate action. Appropriation of the same purpose shall be included in the budget for the preceding year. Sections 7 and 8, Act 3083.

As it is altho the present law assures immediate action and consequently prompt grant of relief, the procedure has become more cumbersome than before. The claimant will have to go first to the Insular Auditor who may or may not take action

within 2 months. If the Auditor does not act upon his claim within 2 months he can proceed to the court. There is however, no appeal now to the Governor-General in case the claim is decided adversely against the private party. If the Insular Auditor now denies the claim within 2 months the poor claimant is left without a remedy.

III—THE DANGER, DEFECTS, AND INCONVENIENCES OF THE ACTUAL PROCEDURE UNDER ACT 3083.

1. *Application of Act 3083 to an actual case.*—Not long after Act 3083 had been written in the statute book of the Philippine Islands a case came up to the Supreme Court of these Islands which tested its strength and its weakness.

Compañía General de Tabacos, pursuant to the provisions of Act 3083, (*Compañía General de Tabacos vs. Government of the Philippine Islands*, 45 Phil. 663) presented a pecuniary claim of ₱283.63, covering freight charges on six cases of denatured alcohol shipped by the Philippine Government on the steamer Mauban of the plaintiff Company from Manila to Currimao, Ilocos Norte, to the Insular Auditor, who on the same date it was presented decided the claim adversely to the plaintiff's interest. Whereupon the plaintiff Company commenced this action in the Court of First Instance of Manila for the recovery of said sum with legal interest and for costs. The defendant demurred, which demurrer was sustained by the Court. Upon appeal the plaintiff Company contended that an error was committed by the lower court in sustaining the demurrer of the defendant.

The question involved in this cases is the legal force and effect of Section 2 of Act 3083. The plaintiff claimed that it was the intention of the Legislature in enacting Act 3083 to enable a private party who has a claim against the Philippine Government arising out of a contract express or implied to present to the Insular Auditor and that if the latter failed to allow or rejected the claim within 2 months from the date it was presented to him, the claimant can then maintain an action in the court against the Government for the said sum. The plaintiff further contended that section 2 of said Act should be construed as to read as follows: "where a person has presented his claim to the Insular Auditor, or that the latter did not decide the same within two months from the date of presentation."

The Supreme Court resolved the question by construing this particular section of the law in this wise: "Giving the language its plain, ordinary meaning, it should be construed to read that a claimant must first present his claim to the Insular Auditor

and second, that he (the Insular Auditor) did not allow the same within 2 months from the date of its presentation." In this case the claim was rejected upon the date it was presented. The plaintiff Company was not able to recover any because as the court said the plaintiff failed to show that Section 2 of Act 3083 under which the Government could be sued was not fulfilled. Said section provides:

"A person desiring to avail himself of the privilege herein conferred must show that he has presented his claim to the Insular Auditor and *the latter did not decide the same within two months from the date of its presentation.*"

In the instant case the claim was decided at the date it was presented, hence, no right of action in the court could be claimed by the plaintiff Company. The Court further held that: "The rule is universal that no matter how meritorious a claim may be, in the absence of express authority, a cause of action can not be maintained upon it against the Government," and it continued, "inasmuch as it is an unusual and extraordinary remedy, the right to maintain an action against the Government must be conferred by the plain, positive, express provisions of a statute, the meaning of which should not be left to doubt or construction." It is plain that on mere ground of technicality a claim could be defeated by the Insular Auditor if he chooses to deny it on the same day it is presented. This is strange taking into consideration the fact that it was the intention of the Philippine Legislature in enacting the law to provide an adequate means to secure immediate relief.

But this is not all. The danger of this system of adjudicating private claims against the Government does not, however, lie in the possible abuse of discretion on the part of the Insular Auditor nor on the possibility of his rendering an erroneous decision without any adequate means to correct the same (as in the case just cited), but in giving the Insular Auditor too much opportunity to arrogate to himself powers which properly belong to the Legislature and the court.

The present procedure is productive of abuses. It leads to confusion and encroachment of powers. Instances there are where the Insular Auditor on the pretext of exercising general supervision and accounting of government funds has refused to pay just claims to private parties. This is well exemplified in the case of *Ynchausti & Company vs. Wright*, 47 Phil 937. In this case as well as in the case of *Compañia General de Tabacos vs. French & Unson*, 39 Phil 34, the Supreme Court, in defining

the limits to which decision of the Insular Auditor can have force and effect, laid down the doctrine that decisions of the Insular Auditor are conclusive only upon the executive branch of the Government but not upon the courts.

It is obvious that when in such "moneyed claims involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties," a dispute arises as to the liability of the parties concerned to such an extent as to require a careful inquiry into all facts connected with the claim, no better branch of the Government could settle the claim than the courts of justice. This function could very well be assigned to a special court, like the Court of Claims, without in the least impairing the exercise of any right or prerogative granted to administrative officials.

The capital defect of the old procedure which the author of the present law (Act 3083) sought to remedy in providing a means whereby private parties can sue the Government immediately in the sense that a claimant will no longer have to wait until the Legislature opens, has apparently been realized. But in substance and in actual practice it has not given any material improvement towards the granting of private claims against the Government. So much so that when the omnipotent Insular Auditor disapproves the claim on the same day it was presented, or within the period of two months, the courts, with all their boasted judicial powers and jurisdiction zealously guarded and guaranteed in our organic laws, are powerless to review or revise the decision of the Insular Auditor. Such is the lamentable situation created by a too technical interpretation of the defective Act 3083.

Besides, according to this new method, the Philippine Legislature is no longer the one to decide the merit of the claim. It must be the Insular Auditor if he chooses to act within 2 months. As between the two better judgment would naturally be expected from the Philippine Legislature. In this respect the Philippine Legislature has substituted the judgment and discretion of the Insular Auditor for that of its own. It amounts to a surrender of one of its prerogatives.

IV—REASONS WHY A COURT OF CLAIMS SIMILAR TO THAT OF THE UNITED STATES SHOULD BE ESTABLISHED IN THIS JURISDICTION

1. *Advantage in General.*—In the preceding discussion it is attempted to demonstrate that the present law has latent and potential defects. It is dangerous in that it gives too much op-

portunity to the Insular Auditor to arrogate powers which properly belong to the court and the Legislature. It is also cumbersome in that a claimant has to pass thru many channels before he could obtain relief. The law is susceptible to technicalities which oftentimes defeat the purpose of its enactment. Now to remedy these dangers, defects and inconveniences, it is necessary that the Legislature should establish here a Court of Claims similar to that of the United States with the same powers and jurisdiction to hear and determine private claims against the Government of the Philippine Islands.

While it is not claimed that the proposed change of procedure is perfect par excellence, yet experience in other jurisdictions where courts of claims are in actual operation teaches us that better justice is secured. It is not only the right of private claimants which is protected but miscarriage of justice on the part of the private individuals as well as on the part of the Government is avoided. It must be borne in mind that the Government as much as the individual, should be protected from unjust and unfair claims which may be allowed on considerations strange to law and justice. Only courts of justice could properly decide the merits of a claim after thorough judicial inquiry and investigation.

Besides this, other advantages may be mentioned:

2. *Specific Advantages.*—Are

First. Better justice is insured and the purpose of the law is better served. In the first place, it is a selfevident fact that in the determination of matters requiring judicial inquiry and investigation as to the merits of a claim or a cause of action, judges are, by training and experience, more qualified to render a just decision than a mere administrative officer. In the second place, if the decision on the merit of the case is left to the Legislature political consideration and political expediency may control the case.

Second. It would constantly remind the people to look upon the Philippine Legislature as the ultimate source of power to obtain relief upon wrongs inflicted by the law itself, which wrong the other coordinate branches of the Government could not remedy.

Third. It would simplify matters. The Legislature to grant its consent and the Court of Claims to exercise its proper function of judicial inquiry and determination.

Fourth. It would foster a stronger spirit of cooperation between the three branches of the Government. The duties of each are clarified.

Fifth. Under the jurisdiction of the Court of Claims more claims other than moneyed claim may be granted private parties without in the least impairing nor diminishing legislative or administrative efficiency as the adjudication of all these claims will be left entirely to the Court of Claims.

V—POWER OF THE PHILIPPINE LEGISLATURE TO CREATE A COURT OF CLAIMS

1. *Has the Philippine Legislature the power to create such Court?*—Having discussed the necessity of establishing such kind of special court, now we find ourselves confronted with the question that, granting that the necessity of establishing such special court exists, Has the Philippine Legislature the power under our organic laws to establish the proposed Court of Claims?

This question leads us naturally to the task of inquiring into and analyzing the powers and authority of the Philippine Legislature as provided for in our organic laws enforced and interpreted by our Supreme Court.

2. *History and development of the powers of the Philippine Legislature.*—At the beginning of American Administration when American sovereignty was first established in these Islands, the function of the legislative branch of the Philippine Government was exercised by the Military Government of occupation which, under international law and practices, was vested with legislative power. This Military Government promulgated General Orders which have the same force and effect as any legislative enactment. Later, complying with the instructions of President McKinley subsequently ratified by the American Congress (sec. 1 of Act of July 1, 1902) the legislative power of the Military Government was transferred to the Philippine Commission. Under section 7 of Act of Congress of July 1, 1902, the Philippine Assembly was created and together with the Philippine Commission it shared the legislative function of the Government in the enactment of laws. Finally by virtue of the provisions of section 12 of the Act of Congress of August 29, 1916, known as the Jones Law, the Philippine Commission gave way to the Philippine Senate. The Philippine Assembly was then made the House of Representatives which, together with the Philippine Senate now composes the present Philippine Legislature. This body has plenary powers to legislate on all matters not specifically prohibited by the United States Congress. Such in brief is the history and development of the power of legislation of the Philippine Legislature of the

Philippine Islands. *People of the Philippine Islands vs. Santiago*, 45 Phil. 126.

3 *Legislative powers of the Philippine Legislature.*—The Philippine Legislature has both specific and general powers of legislation. On specific matters the source of its powers is principally from the present Organic Act, known as the Jones Law. Some powers to legislate on matters essential to its existence and preservation is fairly deduced from general principles of law. These, of course, are not enumerated in the organic act.

Besides specific powers of legislation possessed by the Philippine Legislature, the Jones law also grants this body a general legislative power in Secs. 8 and 12 as follows:

“SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this act.”

“SEC. 12. The general legislative power in the Philippines, except as herein provided, shall be vested in the legislature which shall consist of two houses, one the senate and the other the House of Representatives.”

The legislative power of the Philippine Legislature is unlike that of the Congress of the United States. In the case of the Congress it can only legislate on matters expressly stated in the Constitution. While in the case of the Philippine Legislature it has legislative power on both specific and general matters. The only limitation imposed upon the exercise of general legislative power is that it could not legislate upon matters expressly prohibited by Congress. *U. S. vs. Pompeya*, 31 Phil. 245; *U. S. vs. Limsiongco* 41 Phil. 94. As laid down in the Bull case (*U. S. vs. Bull* 15 Phil 7) “the legislative power delegated to the Government of the Philippine Islands is granted in general terms, subject to specific limitations. The grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to restrictions stated.”

4. *Creation and organization of Courts of the Philippines.*—A study of the history of the courts of the Philippine Islands will show that the judicial system established here is the creation of General Orders of the Military authorities, of the acts of the Philippine Commission and the Philippine Legislature. The first attempt to establish courts is found in General Orders No. 8. It did not only recognize local civil courts for certain purposes, but created also provost courts and military commissions. The complete organization of the Philippine Judiciary

was accomplished by the enactment of Act 136 of the Philippine Commission. The old courts together with all their incidents were replaced by the newly organized courts. After the judiciary was completed, the corresponding jurisdiction to each apportioned and said courts were put in actual operation, the Congress of the United States passed the Philippine Bill of July 1, 1902, confirming and ratifying the creation and jurisdiction of said courts. *Conchada vs. Director of Prisons* 31 Phil 94. Subsequent legislations about the judiciary only have the effect of modifying those already created. So we see from the beginning of the American Administration up to the present time the courts of the Philippine Islands have been the creation of legislative authority, which authority was first exercised by the Military authorities of occupation, then succeeded by the Philippine Commission and lastly by the Philippine Legislature. Historically, therefore, the power to create courts can not be denied that it is and has always existed in the legislative body. That no court could be established in this jurisdiction without direct legislative authority is now beyond doubt. The Supreme Court of the Philippine Islands resolving the question as to whether the Marine and Naval Reservation Authorities at Olongapo could create courts without the authority of the legislature held:

“It is a rudimentary principle that a court cannot be created without direct legislative authority, and in this case no legislative authority whatever can be deduced for the establishment of the special, or court, of the judge in the reservation.” *Payomo vs. Floyd*, 42 Phil 788.

The Philippine Commission and the Philippine Legislature in the exercise of their unquestioned and undeniable authority to create courts have, from time to time as conditions demand, established regular and special courts. We now proceed to enumerate what special courts have been established by legislative authority.

(a) On August 22, 1898, the Military authorities, exercising their legislative function established provost courts with limited civil and criminal jurisdiction. *Paulo vs. Rodriguez* 6 Phil 659.

(b) On February 6, 1902, the Philippine Commission created what was known as the Court of Customs Appeal by enacting Act 355. This special court was abolished on October 13, 1905, by Act 1405 and its powers and duties transferred to the Court of First Instance of the city of Manila.

(c) By the passage of Act 496 the Court of Land Registration was created. This special court was expressly author-

ized by law to settle disputes on land. It confirmed and registered titles on lands already vested, rendering them forever indefeasible. It had special and limited jurisdiction tho not inferior but had only such powers as are expressly granted by the law. *City of Manila vs. Lack* 19 Phil 324. Act 2347 had the effect of abolishing this Court and all cases began and not finally concluded in the Court of Land Registration on July 1, 1914, were transferred to the Court of First Instance of the province where the land is situated. *Government of the Philippine Islands vs. Concepcion* 29 Phil 396.

(d) Quite recently the Philippine Legislature in the exercise of its legislative power to regulate the services rendered by public utilities thruout the Islands enacted Act 3108 which created and established the present Public Utility Commission. This Commission is more in its nature judicial than administrative. Its presiding judge has the rank and prerogatives of a judge of the Court of the First Instance. *Ynchausti Steamship Company vs. Public Utility Commission* 44 Phil 363. Decisions or orders of the Commission may be reviewed or suspended by the Supreme Court of the Philippine Islands thru proper appeal to that body. Secs. 37 and 38 Act 2307; *Manila Electric Ry. & Light Co. vs. Board of Public Utility Com.* 30 Phil 387; *Yangco vs. Board of Public Utility Com.* 31 Phil. 535. But the Supreme Court can only set aside a decision of the Public Utility Commissioner where it clearly appears that there was no evidence to support reasonably such order. *Philippine Shipowner's Association vs. Board of Public Utility Com.* 43 Phil 328.

In all these instances where the Military authorities, the Philippine Commission and the Philippine Legislature have gone on creating such special courts, their power to create such courts has never been challenged nor questioned. Under the general grant of legislative power conferred upon the Legislature to legislate upon all subjects affecting the people of the Philippine Islands which has not been delegated to Congress or expressly prohibited by the Organic Act of July 1, 1902, (*U. S. vs. Pompeya* 31 Phil 245) there is no question that the Legislature is empowered to establish such courts. The only restriction which Congress placed upon this general legislative power regarding courts and their jurisdiction is that it is beyond the power of the Legislature to deprive the Supreme Court and the Courts of the First Instance of their jurisdiction or power thereto granted them by Act of July 1, 1902. *In re Guariña* 24 Phil 37. The creation of special courts has never been construed

as diminishing the jurisdiction of the Supreme Court and the Courts of First Instance.

In a case (*Bactoso vs. Governor of Cebu* 48 Phil 52) recently decided by the Supreme Court the following doctrine, regarding the power of the Legislature to create special courts as the juvenile court, is laid down:

“Within constitutional limitations the legislature has power to create or establish juvenile courts.” *Ex parte Pruitt* 207 Ala. 261; *State vs. Quigg* 33 Fla. 1; *Lindsay vs. Lindsay* 257 Ill. 328; *In re Turner* 94 Kan. 155; *State vs. Jacobs* 130 La. 245; *Com vs. Fasler* 213 Pa. 48, 62; *State vs. Isenhuth* 34 S. D. 218; *Sams vs. State* 133 Tenn. 188, *State vs. Griffin* 7 Tenn. Civ. A 230; *Mill vs. Brown* 31 Uta 473, and to confer upon them jurisdiction, powers, and duties, which do not conflict with organic provisions.” *State vs. Quigg* 83 Fla. 1.

In some jurisdiction, the juvenile court is not an independent tribunal, but a part of other established courts as in the case of the juvenile courts of California, Iowa, Illinois, Pennsylvania, Kentucky, Louisiana, Minnesota, North Carolina, Oklahoma, and Texas. Within constitutional limitations the legislature has power to designate other courts already established, or part thereof to sit as juvenile courts. *People vs. Budd* 24 Cal. A 76; *Lindsay vs. Lindsay* 257 Ill. 328; *Marlowe vs. Com.* 42 Ky. 106, *State vs. Braynt* 94 Neb. 754; *In re Powell* 6 Okl. Cr. 495. The jurisdiction of the juvenile court is special one. *State vs. Jacobs* 130 La. 245; *Shelby County Juvenile Court vs. State* 139 Tenn. 549.

By its nature and limited jurisdiction as to subject-matter it could take cognizance of, the Court of Claims is essentially nothing more nor less than a special court. By reason of this it could only decide claims expressly and clearly stated in the law. *City of Manila vs. Lack* 19 Phil. 324.

VI—CONCLUSIONS AND RECOMENDATIONS

1. *Conclusions.*— Having pointed out the grave dangers, the serious defects, and great inconveniences of the present system of adjudicating private claims against the Philippine Government under Act 3083; having enumerated the several advantages offered by the establishment of a Court of Claims; and having further shown that the Philippine Legislature is clothed with ample powers and authority under the general grant of legislative power of our Organic Act supported by authorities; the writer submits the following suggestion:

2. *Recommendation.*—It is now high time for the Philippine Legislature to yield to this demand of supreme public necessity and need the wise suggestion of the Supreme Court of these Islands when it said (deploring the absence of a Court of Claims in this jurisdiction) :

“But the Philippine Government, however, has not as yet made provision for such action, altho in several instances special statutes have opened the doors of the Courts to individual claimants.” *Compañia General de Tabacos vs. French & Unson*, 39 Phil 58.

PHILIPPINE LAW JOURNAL

Published monthly, July to March inclusive, during the academic year, by the
College of Law, University of the Philippines.

Subscription ₱5.00 per year.

Single number 60 centavos

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HOW DOES OUR SUPREME COURT WORK?

In the Semi-Centennial Meeting of the American Bar Association, the Honorable Harlan F. Stone, Associate Justice of the United States Supreme Court, describes in the speech delivered by him on that occasion the manner by which the United States Supreme Court performs its work of deciding cases, motions, and petitions. The revelation of how that high tribunal of justice disposes of the matters presented before it arouses in many of us a desire, more than a mere passing curiosity, to know just how our own Supreme Court carry on its task of administering justice. Does our Supreme Court exercise such a degree of meticulous care in the consideration of cases brought to it for settlement as is taken by the Federal Court? We are told that in the United States Supreme Court, "every motion and every petition, with papers supporting it, is examined by each Judge of the nine and he comes to the conference with a memorandum, often written in his own hand, embodying the results of his investigation of each application." We are also informed authoritatively that in said Court "every decision, even of a motion, is a nine-judge decision." We are further told that the Justices of that Court hold two conferences to which each and every one of them goes fully prepared to recite the cases to be discussed in said meetings, to argue the questions involved therein, and to give suggestions for their disposition.

Does our Supreme Court adopt these or similar excellent methods? Can the above things be said of the acts, decisions, and judgments of our Supreme Court? Is every decision of our Supreme Court, sitting in *banc*, a nine-judge decision, and, sitting in division, a four-judge or five-judge decision? This matter is particularly important to those whose rights are directly affected by the action of our Supreme Court, for a one-judge decision of said Court is not much better than

