

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-2662 **March 26, 1949**

SHIGENORI KURODA, petitioner,

vs.

Major General RAFAEL JALANDONI, Brigadier General CALIXTO DUQUE, Colonel MARGARITO TORALBA, Colonel IRENEO BUENCONSEJO, Colonel PEDRO TABUENA, Major FEDERICO ARANAS, MELVILLE S. HUSSEY and ROBERT PORT, respondents.

Pedro Serran, Jose G. Lukban, and Liberato B. Cinco for petitioner.

Fred Ruiz Castro Federico Arenas Mariano Yengco, Jr., Ricardo A. Arcilla and S. Melville Hussey for respondents.

MORAN, C.J.:

Shigenori Kuroda, formerly a Lieutenant-General of the Japanese Imperial Army and Commanding General of the Japanese Imperial Forces in The Philippines during a period covering 1943 and 1944, who is now charged before a military Commission convened by the Chief of Staff of the Armed forces of the Philippines with having unlawfully disregarded and failed "to discharge his duties as such command, permitting them to commit brutal atrocities and other high crimes against noncombatant civilians and prisoners of the Imperial Japanese Forces in violation of the laws and customs of war" — comes before this Court seeking to establish the illegality of Executive Order No. 68 of the President of the Philippines: to enjoin and prohibit respondents Melville S. Hussey and Robert Port from participating in the prosecution of petitioner's case before the Military Commission and to permanently prohibit respondents from proceeding with the case of petitioners.

In support of his case petitioner tenders the following principal arguments.

First. — "That Executive Order No. 68 is illegal on the ground that it violates not only the provision of our constitutional law but also our local laws to say nothing of the fact (that) the Philippines is not a signatory nor an adherent to the Hague Convention on Rules and Regulations covering Land Warfare and therefore petitioners is charged of 'crimes' not based on law, national and international." Hence petitioner argues — "That in view off the fact that this commission has been empanelled by virtue of an unconstitutional law an illegal order this commission is without jurisdiction to try herein petitioner."

Second. — That the participation in the prosecution of the case against petitioner before the Commission in behalf of the United State of America of attorneys Melville Hussey

and Robert Port who are not attorneys authorized by the Supreme Court to practice law in the Philippines is a diminution of our personality as an independent state and their appointment as prosecutors are a violation of our Constitution for the reason that they are not qualified to practice law in the Philippines.

Third. — That Attorneys Hussey and Port have no personality as prosecutors, the United State not being a party in interest in the case.

Executive Order No. 68, establishing a National War Crimes Office prescribing rule and regulation governing the trial of accused war criminals, was issued by the President of the Philippines on the 29th days of July, 1947 This Court holds that this order is valid and constitutional. Article 2 of our Constitution provides in its section 3, that —

The Philippines renounces war as an instrument of national policy and adopts the generally accepted principles of international law as part of the of the nation.

In accordance with the generally accepted principle of international law of the present day including the Hague Convention the Geneva Convention and significant precedents of international jurisprudence established by the United Nation all those persons, military or civilian, who have been guilty of planning preparing or waging a war of aggression and of the commission of crimes and offenses consequential and incidental thereto in violation of the laws and customs of war, of humanity and civilization are held accountable therefor. Consequently in the promulgation and enforcement of Execution Order No. 68 the President of the Philippines has acted in conformity with the generally accepted and policies of international law which are part of the our Constitution.

The promulgation of said executive order is an exercise by the President of his power as Commander in chief of all our armed forces as upheld by this Court in the case of *Yamashita vs. Styer* (L-129, 42 Off. Gaz., 664) 1 when we said —

War is not ended simply because hostilities have ceased. After cessation of armed hostilities incident of war may remain pending which should be disposed of as in time of war. An importance incident to a conduct of war is the adoption of measure by the military command not only to repel and defeat the enemies but to seize and subject to disciplinary measure those enemies who in their attempt to thwart or impede our military effort have violated the law of war. (*Ex parte Quirin* 317 U.S., 1; 63 Sup. Ct., 2.) Indeed the power to create a military commission for the trial and punishment of war criminals is an aspect of waging war. And in the language of a writer, a military commission has jurisdiction so long as a technical state of war continues. This includes the period of an armistice or military occupation up to the effective of a treaty of peace and may extend beyond by treaty agreement. (*Cowles Trial of War Criminals by Military Tribunals*, America Bar Association Journal June, 1944.)

Consequently, the President as Commander in Chief is fully empowered to consummate this unfinished aspect of war, namely the trial and punishment of war criminal through the issuance and enforcement of Executive Order No. 68.

Petitioner argues that respondent Military Commission has no Jurisdiction to try petitioner for acts committed in violation of the Hague Convention and the Geneva Convention because the Philippines is not a signatory to the first and signed the second only in 1947. It cannot be denied that the rules and regulation of the Hague and Geneva conventions form part of and are wholly based on the generally accepted principals of international law. In facts these rules and principles were accepted by the two belligerent nations, the United State and Japan, who were signatories to the two Conventions. Such rules and principles therefore form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them for our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rule and principle of international law as continued in treaties to which our government may have been or shall be a signatory.

Furthermore when the crimes charged against petitioner were allegedly committed, the Philippines was under the sovereignty of United States and thus we were equally bound together with the United States and with Japan to the rights and obligations contained in the treaties between the belligerent countries. These rights and obligations were not erased by our assumption of full sovereignty. If at all our emergency as a free state entitles us to enforce the right on our own of trying and punishing those who committed crimes against crimes against our people. In this connection it is well to remember what we have said in the case of *Laurel vs. Misa* (76 Phil., 372):

. . . The change of our form government from Commonwealth to Republic does not affect the prosecution of those charged with the crime of treason committed during then Commonwealth because it is an offense against the same sovereign people. . . .

By the same token war crimes committed against our people and our government while we were a Commonwealth are triable and punishable by our present Republic.

Petitioner challenges the participation of two American attorneys namely Melville S. Hussey and Robert Port in the prosecution of his case on the ground that said attorney's are not qualified to practice law in Philippines in accordance with our Rules of court and the appointment of said attorneys as prosecutors is violative of our national sovereignty.

In the first place respondent Military Commission is a special military tribunal governed by a special law and not by the Rules of court which govern ordinary civil courts. It has already been shown that Executive Order No. 68 which provides for the organization of such military commission is a valid and constitutional law. There is nothing in said executive order which requires that counsel appearing before said commission must be attorneys qualified to practice law in the Philippines in accordance with the Rules of Court. In facts it is common in military tribunals that counsel for the parties are usually military personnel who are neither attorneys nor even possessed of legal training.

Secondly the appointment of the two American attorneys is not violative of our nation sovereignty. It is only fair and proper that United States, which has submitted the vindication of crimes against her government and her people to a tribunal of our nation should be allowed representation in the trial of those very crimes. If there has been any relinquishment of sovereignty it has not been by our government but by the United State Government which has yielded to us the trial and punishment of her enemies. The least that we could do in the spirit of comity is to allow them representation in said trials.

Alleging that the United State is not a party in interest in the case petitioner challenges the personality of attorneys Hussey and Port as prosecutors. It is of common knowledge that the United State and its people have been equally if not more greatly aggrieved by the crimes with which petitioner stands charged before the Military Commission. It can be considered a privilege for our Republic that a leader nation should submit the vindication of the honor of its citizens and its government to a military tribunal of our country.

The Military Commission having been convened by virtue of a valid law with jurisdiction over the crimes charged which fall under the provisions of Executive Order No. 68, and having said petitioner in its custody, this Court will not interfere with the due process of such Military commission.

For all the foregoing the petition is denied with costs *de officio*.

Paras, Feria, Pablo, Bengzon, Tuason, Montemayor and Reyes, JJ., concur.

Separate Opinions

PERFECTO, J., dissenting:

A military commission was empanelled on December 1, 1948 to try Lt. Gen. Shigenori Kuroda for Violation of the laws and customs of land warfare.

Melville S. Hussey and Robert Port, American citizens and not authorized by the Supreme Court to practice law were appointed prosecutor representing the American CIC in the trial of the case.

The commission was empanelled under the authority of Executive Order No. 68 of the President of the Philippines the validity of which is challenged by petitioner on constitutional grounds. Petitioner has also challenged the personality of Attorneys Hussey and Port to appear as prosecutors before the commission.

The charges against petitioner has been filed since June 26, 1948 in the name of the people of the Philippines as accusers.

We will consideration briefly the challenge against the appearance of Attorneys Hussey and Port. It appearing that they are aliens and have not been authorized by the Supreme Court to practice law there could not be any question that said person cannot appear as prosecutors in petitioner case as with such appearance they would be practicing law against the law.

Said violation vanishes however into insignificance at the side of the momentous question involved in the challenge against the validity of Executive Order No. 68. Said order is challenged on several constitutional ground. To get a clear idea of the question raised it is necessary to read the whole context of said order which is reproduced as follows:

EXECUTIVE ORDER NO. 68.

ESTABLISHING A NATIONAL WAR CRIMES OFFICE AND PRESCRIBING RULES AND REGULATION GOVERNING THE TRIAL OF ACCUSED WAR CRIMINAL.

I, Manuel Roxas president of the Philippines by virtue of the power vested in me by the Constitution and laws of the Philippines do hereby establish a National War Crimes Office charged with the responsibility of accomplishing the speedy trial of all Japanese accused of war crimes committed in the Philippines and prescribe the rules and regulation such trial.

The National War crimes office is established within the office of the Judge Advocate General of the Army of the Philippines and shall function under the direction supervision and control of the Judge Advocate General. It shall proceed to collect from all available sources evidence of war crimes committed in the Philippines from the commencement of hostilities by Japan in December 1941, maintain a record thereof and bring about the prompt trial maintain a record thereof and bring about the prompt trial of the accused.

The National War Crimes Office shall maintain direct liaison with the Legal Section General Headquarters, Supreme Commander for the Allied power and shall exchange with the said Office information and evidence of war crimes.

The following rules and regulation shall govern the trial off person accused as war criminals:

ESTABLISHMENT OF MILITARY COMMISSIONS

(a) *General.* — person accused as war criminal shall be tried by military commission to be convened by or under the authority of the Philippines.

II. JURISDICTION

(a) *Over Person.* — The military commission appointed hereunder shall have jurisdiction over all persons charged with war crimes who are in the custody of the convening authority at the time of the trial.

(b) *Over Offenses.* — The military commission established hereunder shall have jurisdiction over all offenses including but not limited to the following:

(1) The planning preparation initiation or waging of a war of aggression or a war in violation of international treaties agreement or assurance or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(2) Violation of the laws or customs of war. Such violation shall include but not be limited to murder ill-treatment or deportation to slave labor or for other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or internees or person on the seas or elsewhere; improper treatment of hostage; plunder of public or private property wanton destruction of cities towns or village; or devastation not justified by military necessity.

(3) Murder extermination enslavement deportation and other inhuman acts committed against civilian population before or during the war or persecution on political racial or religion ground in executive of or in connection with any crime defined herein whether or not in violation of the local laws.

III. MEMBERSHIP OF COMMISSIONS

(a) *Appointment.* — The members of each military commission shall be appointed by the President of the Philippines or under authority delegated by him. Alternates may be appointed by the convening authority. Such shall attend all session of the commission, and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates, occurring after a trial has begun, may be filled by the convening authority but the substance of all proceeding had evidence taken in that case shall be made known to the said new member or alternate. This facts shall be announced by the president of the commission in open court.

(b) *Number of Members.* — Each commission shall consist of not less than three (3) members.

(c) *Qualifications.* — The convening authority shall appoint to the commission persons whom he determines to be competent to perform the

duties involved and not disqualified by personal interest or prejudice, provided that no person shall be appointed to hear a case in which he personally investigated or wherein his presence as a witness is required. One specially qualified member whose ruling is final in so far as concerns the commission on an objection to the admissibility of evidence offered during the trial.

(d) *Voting.* — Except as to the admissibility of evidence all rulings and finding of the Commission shall be by majority vote except that conviction and sentence shall be by the affirmative vote of not less than conviction and sentence shall be by the affirmative vote of not less than two-thirds (2\3) of the member present.

(e) *Presiding Member.* — In the event that the convening authority does not name one of the member as the presiding member, the senior officer among the member of the Commission present shall preside.

IV. PROSECUTORS

(a) *Appointment.* — The convening authority shall designate one or more person to conduct the prosecution before each commission.

(b) *Duties.* — The duties of the prosecutor are:

(1) To prepare and present charges and specifications for reference to a commission.

(2) To prepare cases for trial and to conduct the prosecution before the commission of all cases referred for trial.

V. POWER AND PROCEDURE OF COMMISSION

(a) *Conduct of the Trial.* — A Commission shall:

(1) Confine each trial strictly to fair and expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

(2) Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

(3) Hold public session when otherwise decided by the commission.

(4) Hold each session at such time and place as it shall determine, or as may be directed by the convening authority.

(b) *Rights of the Accused.* — The accused shall be entitled:

(1) To have in advance of the trial a copy of the charges and specifications clearly worded so as to apprise the accused of each offense charged.

(2) To be represented, prior to and during trial, by counsel appointed by the convening authority or counsel of his own choice, or to conduct his own defense.

(3) To testify in his own behalf and have his counsel present relevant evidence at the trial in support of his defense, and cross-examine each adverse witness who personally appears before the commission.

(4) To have the substance of the charges and specifications, the proceedings and any documentary evidence translated, when he is unable otherwise to understand them.

(c) *Witnesses.* — The Commission shall have power:

(1) To summon witnesses and require their attendance and testimony; to administer oaths or affirmations to witnesses and other persons and to question witnesses.

(2) To require the production of documents and other evidentiary material.

(3) To delegate the Prosecutors appointed by the convening authority the powers and duties set forth in (1) and (2) above.

(4) To have evidence taken by a special commissioner appointed by the commission.

(d) *Evidence.*

(1) The commission shall admit such evidence as in its opinion shall be of assistance in proving or disproving the charge, or such as in the commission's opinion would have probative value in the mind of a reasonable man. The commission shall apply the rules of evidence and pleading set forth herein with the greatest liberality to achieve expeditious procedure. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(a) Any document, irrespective of its classification, which appears to the commission to have been signed or issued by any officer, department, agency or member of the armed forces of any Government without proof of the signature or of the issuance of the document.

(b) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member of any medical service

personnel, or by any investigator or intelligence officer, or by any other person whom commission considers as possessing knowledge of the matters contained in the report.

(c) Affidavits, depositions or other signed statements.

(d) Any diary, letter to other document, including sworn statements, appearing to the commission to contain information relating to the charge.

(e) A copy of any document or other secondary evidence of the contents, if the original is not immediately available.

(2) The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nation.

(3) A commission may require the prosecution and the defense to make a preliminary offer of proof whereupon the commission may rule in advance on the admissibility of such evidence.

(4) The official position of the accused shall not absolve him from responsibility nor be considered in mitigation of punishment. Further action pursuant to an order of the accused's superior, or of his Government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

(5) All purposed confessions or statements of the accused shall be admissible in evidence without any showing that they were voluntarily made. If it is shown that such confession or statement was procured by means which the commission believe to have been of such a character that may have caused the accused to make a false statement the commission may strike out or disregard any such portion thereof as was so procured.

(e) *Trial Procedure.* — The proceedings of each trial shall be conducted substantially as follows unless modified by the commission to suit the particular circumstances:

(1) Each charge and specification shall be read or its substance stated in open court.

(2) The presiding member shall ask each accused whether he pleads "Guilty" or "Not guilty."

(3) The prosecution shall make its opening statement."(4) The presiding member may at this or any other time require the prosecutor to state what

evidence he proposes to submit to the commission and the commission thereupon may rule upon the admissibility of such evidence.

(4) The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

(5) The defense may make an opening statement prior to presenting its case. The presiding member may, at this any other time require the defense to state what evidence it proposes to submit to the commission where upon the commission may rule upon the admissibility of such evidence.

(6) The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule as being admissible.

(7) The defense and thereafter the prosecution shall address the commission.

(8) The commission thereafter shall consider the case in closed session and unless otherwise directed by the convening authority, announce in open court its judgment and sentence if any. The commission may state the reason on which judgment is based.

(f) Record of Proceedings. — Each commission shall make a separate record of its proceeding in the trial of each case brought before it. The record shall be prepared by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

(g) Sentence. — The commission may sentence an accused, upon conviction to death by hanging or shooting, imprisonment for life or for any less term, fine or such other punishment as the commission shall determine to be proper.

(h) Approval of Sentence. — No. sentence of a military commission shall be carried into effect until approved by the chief of Staff: Provided, That no sentence of death or life imprisonment shall be carried into execution until confirmed by the President of the Philippines. For the purpose of his review the Chief of Staff shall create a Board of Review to be composed of not more than three officers none of whom shall be on duty with or

assigned to the Judge Advocate General's Office. The Chief of Staff shall have authority to approve, mitigate remit in whole or in part, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to the accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. Except as herein otherwise provided the judgment and sentence of a commission shall final and not subject to review by any other tribunal.

VI. RULE-MAKING POWER

Supplementary Rule and Forms. — Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provision of this Order, or such rules and forms as may be prescribed by the convening authority]or by the President of the Philippines.

VII. The amount of amount of seven hundred thousand pesos is hereby set aside out of the appropriations for the Army of the Philippines for use by the National War Crimes Office in the accomplishment of its mission as hereinabove set forth, and shall be expended in accordance with the recommendation of the Judge Advocate General as approved by the President. The buildings, fixtures, installations, messing, and billeting equipment and other property herefore used by then Legal Section, Manila Branch, of the General Headquarters, Supreme Commander for the Allied Power, which will be turned over by the United States Army to the Philippines Government through the Foreign Liquidation Commission and the Surplus Property Commission are hereby specification reserved for use off the National War Crimes Office.

Executive Order No. 64, dated August 16, 1945, is hereby repealed.

Done in the City of Manila, this 29th day of July in the year of Our Lord, nineteen hundred and forty-seven, and of the Independence of the Philippines, the second.

MANUEL ROXAS
President of the Philippines

By the President:

EMILIO ABELLO
Chief of the Executive Office

EXECUTIVE LEGISLATION

Executive Order No. 68 is a veritable piece of Legislative measure, without the benefit of congressional enactment.

The first question that is trust at our face spearheading a group of other no less important question, is whether or not the President of the Philippines may exercise the legislative power expressly vested in Congress by the Constitution. .

The Constitution provides:

The Legislative powers shall be vested in a Congress of the Philippines which shall consist of a Senate and House of Representatives. (Section 1, Article VI.)

While there is no express provision in the fundamental law prohibiting the exercise of legislative power by agencies other than Congress, a reading of the whole context of the Constitution would dispel any doubt as to the constitutional intent that the legislative power is to be exercised exclusively by Congress, subject only to the veto power of the President of the Philippines, to the specific provision which allow the president of the Philippines to suspend the privileges of the writ of habeas corpus and to place any part of the Philippines under martial law, and to the rule-making power expressly vested by the Constitution in the Supreme Court.

There cannot be any question that the member of the Constitutional Convention were believers in the tripartite system of government as originally enunciated by Aristotle, further elaborated by Montequieu and accepted and practiced by modern democracies, especially the United State of America, whose Constitution, after which ours has been patterned, has allocated the three power of government — legislative, executive, judicial — to distinct and separate department of government.

Because the power vested by our Constitution to the several department of the government are in the nature of grants, not recognition of pre-existing power, no department of government may exercise any power or authority not expressly granted by the Constitution or by law by virtue express authority of the Constitution.

Executive Order No. 68 establishes a National War Crimes Office and the power to establish government office is essentially legislative.

The order provides that person accused as war criminals shall be tried by military commissions. Whether such a provision is substantive or adjective, it is clearly legislative in nature. It confers upon military commissions jurisdiction to try all persons charge with war crimes. The power to define and allocate jurisdiction for the prosecution of person accused of any crime is exclusively vested by the Constitution in Congress. .

It provides rules of procedure for the conduct of trial of trial. This provision on procedural subject constitutes a usurpation of the rule-making power vested by Constitution in the Supreme Court.

It authorized military commission to adopt additional rule of procedure. If the President of the Philippines cannot exercise the rule-making power vested by the Constitution in the Supreme Court, he cannot, with more reason, delegate that power to military commission.

It appropriates the sum of P7000,000 for the expenses of the National War Crimes office established by the said Executive Order No. 68. This constitutes another usurpation of legislative power as the power to vote appropriations belongs to Congress.

Executive Order No. 68., is, therefore, null and void, because, though it the President of the Philippines usurped power expressly vested by the Constitution in Congress and in the Supreme Court.

Challenged to show the constitutional or legal authority under which the President issued Executive Order No. 68, respondent could not give any definite answer. They attempted, however, to suggest that the President of the Philippines issued Executive Order No. 68 under the emergency power granted to him by Commonwealth Act No. 600, as amended by Commonwealth Act No. 620, and Commonwealth Act No. 671, both of which are transcribed below:

COMMONWEALTH ACT NO. 600.

AN ACT DECLARING A STATE OF EMERGENCY AND AUTHORIZING THE PRESIDENT TO PROMULGATE RULES AND REGULATION TO SAFEGUARD THE INTEGRITY OF THE PHILIPPINES AND TO INSURE THE TRANQUILITY OF ITS INHABITANTS.

Be it enacted by the National Assembly of the Philippines:

SECTION 1. The existence of war in many parts of the world has created a national emergency which makes it necessary to invest the President of the Philippines with extraordinary power in order to safeguard the integrity of the Philippines and to insure the tranquility of its inhabitants, by suppressing espionage, lawlessness, and all subversive to the people adequate shelter and clothing and sufficient food supply, and by providing means for the speedy evacuation of the civilian population the establishment of an air protective service and the organization of volunteer guard units, and to adopt such other measures as he may deem necessary for the interest of the public. To carry out this policy the President is authorized to promulgate rules and regulations which shall have the force and effect off law until the date of adjournment of the next regulation which shall have the force and effect of law until the date of adjournment of the next regular session of the First Congress of the Philippines, unless sooner amended or repealed by the Congress of Philippines. Such rules

and regulation may embrace the following objects: (1) to suppress espionage and other subversive activities; (2) to require all able-bodied citizens (a) when not engaged in any lawful occupation, to engage in farming or other productive activities or (b) to perform such services as may be necessary in the public interest; (3) to take over farm lands in order to prevent or shortage of crops and hunger and destitution; (4) to take over industrial establishment in order to insure adequate production, controlling wages and profits therein; (5) to prohibit lockouts and strikes whenever necessary to prevent the unwarranted suspension of work in productive enterprises or in the interest of national security; (6) to regulate the normal hours of work for wage-earning and salaried employees in industrial or business undertakings of all kinds; (7) to insure an even distribution of labor among the productive enterprises; (8) to commandship and other means of transportation in order to maintain, as much as possible, adequate and continued transportation facilities; (9) to requisition and take over any public service or enterprise for use or operation by the Government; (10) to regulate rents and the prices of articles or commodities of prime necessity, both imported and locally produced or manufactured; and (11) to prevent, locally or generally, scarcity, monopolization, hoarding injurious speculations, and private control affecting the supply, distribution and movement of foods, clothing, fuel, fertilizer, chemical, building, material, implements, machinery, and equipment required in agriculture and industry, with power to requisition these commodities subject to the payment of just compensation. (As amended by Com. Act No. 620.)

SEC. 2. For the purpose of administering this Act and carrying out its objective, the President may designate any officer, without additional compensation, or any department, bureau, office, or instrumentality of the National Government.

SEC. 3. Any person, firm, or corporation found guilty of the violation of any provision of this Act or of this Act or any of the rules or regulations promulgated by the President under the authority of section one of this Act shall be punished by imprisonment of not more than ten years or by a fine of not more than ten thousand pesos, or by both. If such violation is committed by a firm or corporation, the manager, managing director, or person charge with the management of the business of such firm, or corporation shall be criminally responsible therefor.

SEC. 4. The President shall report to the national Assembly within the first ten days from the date of the opening of its next regular session whatever action has been taken by him under the authority herein granted.

SEC. 5. To carry out the purposed of this Act, the President is authorized to spend such amounts as may be necessary from the sum appropriated

under section five Commonwealth Act Numbered four hundred and ninety-eight.

SEC. 6. If any province of this Act shall be declared by any court of competent jurisdiction to be unconstitutional and void, such declaration shall not invalidate the remainder of this Act.

SEC. 7. This Act shall take upon its approval.

Approved, August 19, 1940.

COMMONWEALTH ACT NO. 671

AN ACT DECLARING A STATE OF TOTAL EMERGENCY AS A
RESULT OF WAR INVOLVING THE PHILIPPINES AND
AUTHORIZING THE PRESIDENT TO PROMULGATE RULE AND
REGULATIONS TO MEET SUCH EMERGENCY.

Be it enacted the National Assembly of the Philippines;

SECTION 1. The existed of war between the United State and other countries of Europe and Asia, which involves the Philippines, makes it necessary to invest the President with extraordinary powers in order to meet the resulting emergency.

SEC. 2. Pursuant to the provision of Article VI, section 16, of the Constitution, the President is hereby authorized, during the existence of the emergency, to promulgate such rules and regulation as he may deem necessary to carry out the national policy declared in section 1 hereof. Accordingly, he is, among other things, empowered (a) to transfer the seat of the Government or any of its subdivisions, branches, department, offices, agencies or instrumentalities; (b) to reorganize the Government of the Commonwealth including the determination of the order of precedence of the heads of the Executive Department; (c) to create new subdivision, branches, departments, offices, agency or instrumentalities of government and to abolish any of those already existing; (d) to continue in force laws and appropriation which would lapse or otherwise became inoperative, and to modify or suspend the operation or application of those of an administrative character; (e) to imposed new taxes or to increase, reduce, suspend, or abolish those in existence; (f) to raise funds through the issuance of bonds or otherwise, and to authorize the expensive of the proceeds thereof; (g) to authorize the National, provincial, city or municipal governments to incur in overdrafts for purposes that he may approve; (h) to declare the suspension of the collection of credits or the payment of debts; and (i) to exercise such other power as he may deem

necessary to enable the Government to fulfill its responsibilities and to maintain and enforce its authority.

SEC. 3. The President of the Philippines report thereto all the rules and regulation promulgated by him under the power herein granted.

SEC. 4. This Act shall take effect upon its approval and the rules and regulations. promulgated hereunder shall be in force and effect until the Congress of the Philippines shall otherwise provide.

Approved December 16, 1941.

The above Acts cannot validly be invoked, Executive Order No. 68 was issued on July 29, 1947. Said Acts had elapsed upon the liberation of the Philippines from the Japanese forces or, at the latest, when the surrender of Japan was signed in Tokyo on September 2, 1945.

When both Acts were enacted by the Second National Assembly, we happened to have taken direct part in their consideration and passage, not only as one of the members of said legislative body as chairman of the Committee on Third Reading population Known as the "Little Senate." We are, therefore in a position to state that said measures were enacted by the second national Assembly for the purpose of facing the emergency of impending war and of the Pacific War that finally broke out with the attack of Pearl Harbor on December 7, 1941. We approved said extraordinary measures, by which under the exceptional circumstances then prevailing legislative power were delegated to the President of the Philippines, by virtue of the following provisions of the Constitution:

In time of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe to promulgate rules and regulations to carry out declared national policy. (Article VI, section 26.)

It has never been the purpose of the National Assembly to extend the delegation beyond the emergency created by the war as to extend it farther would be violative of the express provision of the Constitution. We are of the opinion that there is no doubt on this question.; but if there could still be any the same should be resolved in favor of the presumption that the National Assembly did not intend to violate the fundamental law.

The absurdity of the contention that the emergency Acts continued in effect even after the surrender of Japan can not be gainsaid. Only a few months after liberation and even before the surrender of Japan, or since the middle of 1945, the Congress started to function normally. In the hypothesis that the contention can prevail, then, since 1945, that is, four years ago, even after the Commonwealth was already replaced by the Republic of the Philippines with the proclamation of our Independence, two district, separate and independence legislative organs, — Congress and the President of the Philippines — would have been and would continue enacting laws, the former to enact

laws of every nature including those of emergency character, and the latter to enact laws, in the form of executive orders, under the so-called emergency powers. The situation would be pregnant with dangers to peace and order to the rights and liberties of the people and to Philippines democracy.

Should there be any disagreement between Congress and the President of the Philippines, a possibility that no one can dispute the President of the Philippines may take advantage of the long recess of Congress (two-thirds of every year) to repeal and overrule legislative enactments of Congress, and may set up a veritable system of dictatorship, absolutely repugnant to the letter and spirit of the Constitution.

Executive Order No. 68 is equally offensive to the Constitution because it violates the fundamental guarantees of the due process and equal protection of the law. It is especially so, because it permit the admission of many kinds evidence by which no innocent person can afford to get acquittal and by which it is impossible to determine whether an accused is guilty or not beyond all reasonable doubt.

The rules of evidence adopted in Executive Order No. 68 are a reproduction of the regulation governing the trial of twelve criminal, issued by General Douglas Mac Arthur, Commander in Chief of the United State Armed Forces in Western Pacific, for the purpose of trying among other, General Yamashita and Homma. What we said in our concurring and dissenting opinion to the decision promulgated on December 19, 1945, in the Yamashita case, L-129, and in our concurring and dissenting opinion to the resolution of January 23, 1946 in disposing the Homma case, L-244, are perfectly applicable to the offensive rules of evidence in Executive Order No. 68. Said rules of evidence are repugnant to conscience as under them no justice can expected.

For all the foregoing, conformably with our position in the Yamashita and Homma cases, we vote to declare Executive Order No. 68 null and void and to grant petition.