

VICENTE SOTTO, PETITIONER, VS. THE COMMISSION ON ELECTIONS ET AL., RESPONDENTS.

G. R. No. L-329. April 16, 1946

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FERIA, J.:

This is a petition filed by Vicente Sotto for review of the decision of the Commission on Elections which declared the respondent Emilio M. Javier as the true and legitimate President of the Popular Front (Sumulong) Party. The petitioner Vicente Sotto contends in his petition that he is the President of said Party, and prays that said decision be reviewed and reversed and that petitioner be declared the legitimate President of the Party.

The Commission on Elections after stating the facts and the evidence submitted by both parties in this case, makes, among others, the following findings of fact and law in its decision.

"Creemos que no hay ninguna discusion sobre el hecho de que durante la enfermedad del difunto, Don Juan Sumulong, y despues del fallecimiento de este, el Dr. Emilio M. Javier actuó y fue reconocido por los miembros del partido como presidente interino del Partido Frente Popular (Sumulong), por lo menos, hasta el 1.º de febrero de 1946, en que cuatro miembros del directorio del partido tomaron la resolucion (Exhibit E) aceptando la dimision presentada por aquel el 30 de abril de 1942, sometida a dichos miembros el 1.º de febrero de 1946. El mismo, Sr. Lorenzo Sumulong, abogado del Sr. Vicente Sotto, admitio ante la Comision que el Dr. Javier era el presidente interino del partido durante dicho periodo de tiempo, si bien le califico como presidente interino de facto.

"Se sostiene por el Sr. Vicente Sotto que el Dr. Javier dejo de ser presidente interino del partido en virtud de su carta dimision (Exhibit F) que fue aceptada el 1.º de febrero de 1946. * * *

"Las pruebas no demuestran de que haya tenido lugar alguna vez una eleccion para llenar la vacante producida por la muerte del Sr. Sumulong. Por el contrario, aparece claramente establecido que todos los miembros del Directorio incluyendo a los que actualmente son oponentes del Dr. Javier y todos los delegados que asistieron en la alegada convencion celebrada el 27 de enero de 1946, reconocieron al Dr. Javier como el presidente interino del Partido.

"El derecho que el Sr. Sotto invoca para reclamar que se le reconozca como el verdadero y legitimo presidente del Partido Frente Popular (Sumulong) se deriva de la resolucion adoptada por cuatro miembros del Directorio el 1.º de febrero de 1946, aceptando la dimision del Dr. Javier presentada en 30 de abril de 1948 en virtud de su carta (Exhibit F).

"Ahora bien; es legal y valida la reunion del Directorio de 1.º de febrero de 1946 y la resolucion adoptada por cuatro miembros de dicho Directorio y ha producido el efecto de despojar al Dr. Javier del cargo de presidente interino del Partido Frente Popular (Sumulong) "Opinamos que la reunion del Directorio del Partido convocada el 1.º de febrero de 1946 por el secretario, Sr. Laude, y la resolucion adoptada por cuatro miembros de dicho Directorio son nulas e invalidas por la razon de que dicha reunion ha sido convocada por el secretario Sr. Laude, sin conocimiento ni autorizacion del presidente del Partido y la Resolucion fue adoptada por una minoria de

cuatro miembros constando, segun aparece de las pruebas, que el Directorio del Partido lo constituian once miembros. Ademas, dicha resolucion esta fundada en una carta dimision que, a todas luces, no era real y efectiva, puesto que habia sido presentada bajo la presion de las circunstancias predominantes entonces durante el regimen Japones, segun explico satisfactoriamente el Dr. Javier.

"Habiendo nosotros llegado a la conclusion de que la reunion convocada por el secretario, Sr. Laude, el 1.[o] de febrero de 1946 y la resolucion adoptada en dicha reunion por cuatro miembros del Directorio que no forman mayoria son nulas e invalidas, y derivando el derecho que invoca el Sr. Sotto para que se le reconozca como el verdadero y legitimo presidente del Partido Frente Popular (Sumulong) de la mencionada resolucion en que se acepto la supuesta dimision del Dr. Javier, forzoso es concluir que las pretensiones del Sr. Sotto carecen absolutamente de base."

Before proceeding to discuss the questions involved in this case, it is necessary to determine whether or not, under section 9 of Commonwealth Act No. 657, we can review the findings of fact of the Commission on Elections. Said section 9 provides:

"Any decision, order, or ruling of the Commission on Elections may be reviewed by the Supreme Court by writ of certiorari in accordance with the Rules of Court or with such rules as may be promulgated by the Supreme Court."

Undoubtedly the law, in using the words "may be reviewed by writ of certiorari," does not refer to the special civil action of certiorari (Rule 67 of the Rules of Court), for by this special civil action the superior court can only review the acts of the inferior court, board or officer exercising judicial functions when the respondent acted without or in excess of its or his jurisdiction, in order to annul or modify the acts complained of. By certiorari errors committed by the respondent cannot be reviewed and corrected.

Under section 2, Article VIII of the Constitution of the Philippines, as well as our Rules of Court, final judgment and decrees of the inferior or lower courts may be reviewed by this Court by appeal, writ of error, or certiorari. By appeal the appellate court reviews all the findings of law and of fact of the court a quo, as in special proceedings (Rule 105, Rules of Court). By writ of error the appellate court reviews only the findings of law or of fact of the lower court assigned in the assignment of errors of the appellant, as in ordinary civil actions (section 19, Rule 48). And by certiorari the appellate or superior Court can only review questions or errors of law decided or committed by the lower court, as provided in Rules 43, 44 and 46 of the Rules of Court. Questions or findings of fact of the inferior tribunal, cannot be reviewed on certiorari. "Evidence which is made a part of the record cannot be examined to determine whether or not it justifies the finding on which the decision or judgment was made." (See the following rule.)

"The general rule is that, in the absence of statute or local practice otherwise, questions or findings of fact, in the inferior tribunal, are not reviewable on certiorari, and that evidence which is made a part of the record cannot be examined to determine whether or not it justified the findings on which the decision or judgment was made; nor will rulings on questions of fact, within the inferior tribunal's jurisdiction, be reviewed." (14 Corpus Juris Secundum, pp. 311,312.) (Italics supplied.)

In accordance with the provision of section 9 of Commonwealth Act No. 657, this Court cannot, therefore, review the rulings or findings of fact of the Commission on Elections.

It is true that Article X, section 2, of the Constitution of the Philippines provides that "decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court." As the review may only be effected, as above-stated, by any one of the three modes or ways above-mentioned, and not by the three at the same time, for the scope of each one is different and at variance with the others, and the Philippine Congress has provided in

section 9, Commonwealth Act No. 657, that decisions, orders and rulings of the Commission on Elections may be reviewed by this Court by writ of certiorari in accordance with the Rules of Court, we have to apply said provision of Act No. 657, since its constitutionality is not assailed by the parties in this case, and the presumption is that it is constitutional. It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties, and that when it is raised, if the record also presents some other ground upon which the court may rest its judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises in which a decision upon such question will be unavoidable (Cooley's Constitutional Limitations, seventh edition, p. 231). The contention in the dissenting opinion that "whether the point (unconstitutionality) of the provision of section 9, Act No. 657, is raised or not by either party, we cannot close our eyes to the constitutional mandate," is therefore evidently erroneous.

But assuming that this Court may review the findings of facts in the decision of the Commission on Elections, it is obvious that the findings of fact as well as of law in the decision of the Commission are supported by the evidence in the record and are in accordance with the law.

There is no question that respondent Emilio M. Javier was designated in November, 1941, by the late Juan Sumulong, President of the Popular Front (Sumulong) Party as his substitute or acting President of the Party during his illness, under section 13 (third paragraph) of the "Rules and Regulations of the Party." After the death of Juan Sumulong on January 9, 1942, not only the members of the Directorate, but also the members of the Party in the convention of January 27, 1946, considered and recognized Emilio M. Javier as Acting President of the Party (Exhibits 5, 6, 7, 11, 12, 16 and 19-Javier; and Exhibit H-Sotto). The right of said respondent to act as such President was only questioned after the meeting of four members of the Directorate held on February 1, 1946, in which the said four members adopted a resolution accepting the alleged resignation of respondent Javier tendered in his letter dated April 30, 1942, and designating petitioner Sotto as Acting President.

The only question raised and to be determined by this Court, is whether or not the action or resolution of the four members of the Directorate, Lorenzo Sumulong, Jose Robles, Jr., Jose de Leon and Vicente Sotto, accepting the said resignation of respondent Javier and designating or appointing Vicente Sotto as Acting President of the Party, was valid.

We are of the opinion and so hold that Commission on Elections' conclusion to the effect that it is not valid, and that respondent Emilio M. Javier continues to be up to now the acting President of the Popular Front Party (Sumulong), is in conformity with the facts and the law of the case, for the following reasons:

First, because respondent Javier's letter dated April 30, 1942 (Exhibit F), in which he tendered his resignation as acting President of the Party, was not a real resignation. According to him, he was compelled to write said letter not because he really wanted to resign, but in order to avoid being molested by the Japanese who wanted to appoint him to some government position. This explanation has not been contradicted, and is confirmed by the subsequent attitude or acts of the said respondent. If it were really his intention to resign he would have insisted on or reiterated his resignation, and not acted as President in all the meetings of the Directorate and the convention of the Party after the restoration of the Commonwealth Government, as shown in Exhibits 5, 6, 7, 11, 12, 19 (Javier) and H (Sotto). The fact that the four members of the Directorate had to dig it up from the records and papers of the party, wherein it lay buried and forgotten since the year 1942, and acted on said letter of resignation only after the Party convention on January 27, 1946, in their meeting of February 1, 1946, which was called by the Secretary without the knowledge and held without the consent of respondent Javier (Exhibit 10-Javier), confirms this conclusion.

Secondly, because said meeting of February 1, 1946, was called by the Secretary on January 30, of the same year, without the knowledge and consent of the President Emilio Javier. According to the Rules and Regulations of the Party, "an executive council, consisting of not less than five nor more than fifteen, shall act as a body of immediate advisers to the President, when their opinion is sought by the President regarding questions falling within his powers and prerogatives" (section 12). "The President and Executive Council shall constitute the Directorate of the Party" (section 13). And "the executive council shall be called to a meeting by the President at least once every month or as often as, in the opinion of the President, the affairs of the country or of the party so require" (section 12). As the President and the Executive Council constitute the Directorate, and there is no provision in said Rules and Regulations about when the Directorate shall meet and by order of whom the meeting thereof shall be called, it is obvious that the meetings of the Directorate shall be called and held at the same time and in the same manner as those of the Executive Council. That it was called without the knowledge and consent of Emilio A. Javier is admitted by Secretary Laude, who further testified that according to said section 12, the call to a meeting must be made by the President or by his authority (testimony of Laude, p. 37). Whether or not the Secretary had, in case the President was absent or incapacitated, authority to call a Directorate meeting upon the request of some members, is immaterial in the present case, for acting President Javier was not then absent or incapacitated to act as President.

Thirdly, because the meeting was called without previous notice to all the members of the Directorate, at least to President Javier. According to section 13 of the Rules and Regulations of the Party, "The presence of four members of the Directorate shall be sufficient for the adoption of valid measures, if the General Secretary or the Secretary to the President should certify that all the members were duly notified." It is true that at the foot of the resolution adopted by the petitioner and three other members of the Directorate in their meeting of February 1, 1946 (Exhibit E-Sotto), there appears a certificate of Secretary Laude to the effect that all the members of the Directorate were notified of the holding of said meeting; but such certificate constitutes at most a presumption *juris tantum* of the truth of the facts therein stated. And that presumption was rebutted by the fact affirmed by the respondent Javier in the letter he wrote to Nicolas Laude on January 30, 1946 (Exhibit 10-Javier), as soon as Javier knew about the proposed meeting on February 1, 1946, through Geronimo Santiago, in which letter he reproached Laude for having called a meeting without the knowledge and consent of Javier as President and for having sent notice thereof only to the few members of the Directorate who solicited therefor, which imputation Laude did not deny in his answer of January 31, 1946 (Exhibit W-Sotto). Javier's letter reads as follows:

"It has come to my attention that you are calling a meeting of the National Directorate of our party for this coming Friday, February 1, 1946, at 3 p. m. in the Office of Atty. Lorenzo Sumulong, candidate nominated by the Roxas faction, Liberal Wing of the Nacionalista Party. As President of the party, I did not have any previous knowledge of this proposed meeting. Nobody has asked me for the holding of the same and I have not authorized anyone that this meeting be called. I am, therefore, directing you to cancel the notification that you have given the few members who have solicited for this meeting for reasons that are obvious."

The requirement of notice to all the members of the Directorate or Board of Directors for the validity of the acts or resolutions adopted by those present in a special meeting, as that of February 1, 1946, is in conformity with the following well-established rule, which may be applied to special meeting of directorates of political parties and other associations:

"The great weight of authority, therefore, is to the effect that notice of a special meeting must be given to every director, unless there is some express provision in the charter or by-laws or established usage to the contrary, or unless it is impossible or impracticable to do so. Except in these cases, a special meeting held in the absence of some of the directors, and without any notice to them, is illegal, and the action at such a meeting, although by a

majority of the directors, is invalid, unless subsequently ratified or unless rights have been acquired by innocent third persons, as against whom the corporation must be held estopped. A provision that a majority shall form a board for the transaction of business does not change the rule. The reason for this rule has been said to be that each member of a corporate body has the right of consultation with the others, and has the right to be heard upon all questions considered, and it is presumed that, if the absent members had been present, they might have dissented, and their arguments might have convinced the majority of the unwisdom of their proposed action and thus have produced a different result. If, however, they had notice and failed to attend they waived their rights, likewise if they signed a waiver of notice prior to the meeting.' Moreover, a director cannot be deprived of his right to be notified of a special and unusual matter which is to be considered and acted upon at a directors' meeting on the ground that if such notice had been given and by reason thereof he had been present he would have been unable to have induced the directors to have refrained from the action taken. So it is no excuse for failure to give notice to say that the quorum present at the meeting all voted in favor of the act under consideration, and that the presence of the directors not notified would not have changed, the result." (Italics supplied; *Fletcher's Cyclopedia of Private Corporations*, Vol. 3, pp. 3059-3061.)

Fourthly, the resolution (Exhibit B-Sotto) adopted in the meeting of February 11, 1946, by the votes of the same four members, and those cast by Lorenzo Sumulong by proxy from Jose Alejandrino and Sixto Lopez, in which the resolution adopted in the meeting of February 1, 1946, was ratified, shows that the petitioner and his associates impliedly admit that the previous resolution was of no effect unless so ratified. But said resolution of February 11 could not have the effect of validating the previous one because the resolution of February 11 was also null and void for the same reasons or grounds militating against the validity of the resolution of February 1, 1946. Respondent acting President Emilio M. Javier did not cease and was still the acting President of the Party when the meeting of February 11 was called, and the only members called to the said meeting, according to Exhibit N-Sotto, were Lorenzo Sumulong, personally and as attorney in fact of Jose Alejandrino and Sixto Lopez, Jose Robles, Jr., Jose de Leon and Vicente Sotto, and Geronimo Santiago who refused to attend alleging that the meeting was being called in violation of the Rules and Regulations (Exhibit N-1-Sotto).

The question raised and decided in the present case as to who is the legitimate President of the party, Popular Front (Sumulong), is material and necessary for the purpose of determining who form or constitute the Directorate of the Popular Front Party. As some members of the Directorate have sided with the petitioner Vicente Sotto, and the others with respondent Emilio M. Javier, the decision on said question carries necessarily with it the determination of which of the two sets claiming to constitute the Directorate is the legitimate one. The Commission on Elections having declared that respondent Emilio M. Javier is the legitimate President, the members of the Directorate who support him constitute the Directorate of the Party.

The calls to meetings and minutes of the meetings of the Directorate signed by the Secretary Nicolas Laude, which are the only reliable records which can be taken into consideration, for all the records and papers of the Party were destroyed by fire in the house of the late President Juan Sumulong (testimony of Laude, p. 3), show that the members of the Directorate were the following: Emilio Javier as acting President and Chairman of the Directorate, Geronimo Santiago, Vicente G. Cruz, Jose Palarca, Jose de Leon, Jose Alejandrino, Lorenzo Sumulong, Vicente Sotto (Exhibit 6-Javier), Servando de los Angeles (Exhibit 8-Javier), Mamerto Manalo, Jose Robles and Josefina Phodaca (Exhibit 11-Javier). Of these eleven members, Jose de Leon, Jose Robles, Jr., and Lorenzo Sumulong have sided with petitioner Vicente Sotto, and Jose Alejandrino and Sixto Lopez (the latter's name does not appear as member of the Directorate in the calls to and minutes of the meetings presented as evidence) gave their proxy to Sumulong, which was issued by the latter in the meeting of February 11, 1946. And the majority of the members, Geronimo Santiago, Vicente G. Cruz, Jose Palarca, Servando de los Angeles, Mamerto Manalo and Josefina Phodaca, who have sided with respondent Emilio M. Javier, constitute, therefore,

the legitimate directorate of the Popular Front Party.

According to section 11 of the Rules and Regulations of the Popular Front Party (Sumulong), "the President shall be the supreme representative of the Party." Respondent Javier, with the Directorate formed by the majority of the members thereof who have remained loyal to the party and have sided with him, is the one who can act for the party. The individual members of the Directorate who refuse to recognize the legitimate President of the Party cannot be considered as members of the Directorate of said party, because section 13 of the said Rules and Regulations provides that the President and his Executive Council shall constitute the Directorate of the Popular Front Party. Any subsequent defection or resignation of members of the legitimate Directorate of the Popular Front Party (Sumulong) could not affect the constitution of the Directorate, since according to the last paragraph of said section 13, "vacancies occurring in the Directorate shall be filled by the remaining members who shall elect, by unanimous or majority vote of all the members, the persons who are to fill the vacancies."

The contention that, the minority party Popular Front (Sumulong) having split itself in two groups, one headed by Vicente Sotto, and the other by Emilio M. Javier, "the practical, equitable, just, and lawful way of deciding this case, in my opinion, is to divide equally the number of inspectors corresponding to the Sumulong Popular Front Party in every city or municipality where said party polled at least ten per centum of the number of votes cast in the last national election in this manner * * *" is untenable. Because there is nothing in the record to show that there was a split or division of the Popular Front Party (Sumulong) or that Vicente Sotto, Lorenzo Sumulong, Jose de Leon and Jose Robles, Jr. have formed a faction of national character. In fact, the evidence shows that the Directorate of the respondent voted to give Lorenzo Sumulong inspectors if he filed his certificate of candidacy in the name of the Popular Front (Exhibit 14-Javier); and that Sumulong, in a letter he sent to Javier during the pendency of this case and exhibited by the latter at the hearing in this Court, asked the latter to appoint him as representative of the Party who shall propose election inspectors in his representative district. The most that can be inferred from the facts of the present case is that there has been a tentative secession of those members of the Directorate from the Popular Front Party (Sumulong): and according to section 72 of the Election Code "no inspector shall be granted to any branch or faction which has seceded from its respective party * * *."

Besides, assuming, arguendo, that the Popular Front Party (Sumulong) was split into two groups or factions of national character, the provision of section 8 of the Commonwealth Act No. 725, to the effect that "should the majority party be divided into two factions of national character with candidates for President, Vice-President and Senators, each faction shall have one inspector and his substitute, etc." cannot be invoked by analogy. If Congress had to expressly so provide in said section 8 of Act No. 725, it was because without such express provision, the faction of the Nacionalista Party headed by Manuel A. Roxas would not have been entitled to election inspectors under the Election Code. And as said section 8 applies only in case of a division of the majority into two factions, it is to be presumed that it was not the intention of Congress to authorize a division or distribution of election inspectors in case of a split of any one of the minority parties, which are entitled to at most one inspector. *Expressio unius est exclusio alterius*.

Whether a pact of alliance with the faction of the Nacionalista Party headed by Manuel A. Roxas was validly adopted in the convention of the Party held on January 27, 1946, as contended by the petitioner Vicente Sotto, or not as contended by the respondent Dr. Emilio M. Javier, is immaterial and foreign to the question submitted to the Commission on Elections. The latter has no jurisdiction to determine that question which is a matter of policy of the Party, nor to enforce compliance with said resolution (section 3, Commonwealth Act No. 657 in connection with section 2, Article X, Philippine Constitution). Such alliance has nothing to do with the right to appoint representatives who shall propose the election inspectors to which the party is entitled under the law. Even if such an alliance had been actually effected, said faction of the Nacionalista Party could not have acquired the right of

the Popular Front Party to have one election inspector in certain representative districts; though the Popular Front Party was free to designate persons affiliated to the said faction of the Nacionalista Party as its representatives who shall propose the election inspectors to which it is entitled. As the Rules and Regulations (Exhibits A-Sotto, 1-Javier) do not authorize the Directorate to remove or appoint the President of the Party, the proper procedure would have been to submit to said convention of January 27, 1946 or some other convention duly called for the purpose, the question whether respondent Emilio M. Javier should continue acting as President or a new one appointed in his place.

The statement in the dispositive part of the decision of the Commission on Elections to the effect that the President Emilio M. Javier "tiene derecho, por medio de su Directorio," to appoint the persons who shall propose the election inspectors to which the party is entitled, is not erroneous.

Section 8 of Act No. 725 provides that the inspector shall be recommended by the political party. A political party, as any other association, acts generally through its directorate. But in the present case, section XI of the Rules and Regulations of the Popular Front Party provides that the President is the supreme representative of the Party, and acts as chairman of the Directorate. Although the Directorate votes for or selects the representatives, the President, as chairman of the Directorate and the supreme representative of the Party, is the one who shall appoint the representative selected or approved by the Directorate. The Commission on Elections in stating that the President has the right to appoint "por medio de su Directorio," does not mean to say that the President is the only one who selects and appoints them, and that the only function of the Directorate is to transmit the selection and appointment made by the President to the proper authorities. It means to say that the President has the right, with the express or implied approval of the Directorate, to appoint such representatives. That such is the meaning of that part of the decision complained of, is confirmed by the petitioner himself, who in paragraph 2 of his petition alleges "que el recurrente es el actual presidente interino del Partido Politico denominado Frente Popular Sumulong, y, como tal es el que tiene derecho, por medio de su directorio, a nombrar las personas que han de proponer los inspectores electorales a que tiene derecho dicho partido en las proximas elecciones."

In view of all the foregoing, the Commission on Elections' decision that the respondent Emilio M. Javier, and not the petitioner Vicente Sotto, is the legitimate President of the Popular Front Party and, therefore, the members of the Directorate who have sided with him constitute the legitimate Directorate of the Party, should be and is hereby affirmed, with costs against the petitioner.

So ordered.

Jaranilla, Pablo, and Briones, JJ., concur. Moran, C. J., concurs in the result.

PERFECTO, J., with whom concurs DE JOYA, J., concurring:

Petitioner prays that the decision of the Commission on Elections, declaring respondent Dr. Emilio M. Javier as the true and legitimate president of the political party known as "Popular Front (Sumulong)," be reviewed and revoked, and that petitioner be declared as the legitimate acting president of said political party.

The decision of the Commission on Elections is based on the facts as found by said constitutional entity. There is no dispute that for the last five years until the controversy arose in February, 1946, respondent Javier had been unanimously, without excepting petitioner himself, considered as acting president and national leader of the party. Since his designation in 1941, Doctor Javier had been occupying the position without any interruption and performing the functions, duties and privileges of the position and, in fact, even after the controversy has arisen

and after the petition has been filed in this case.

All the members of the party directorate, including petitioner and the others who are siding now with him, had been accepting and recognizing Doctor Javier's leadership, until the rift that occurred recently, arising from a statement attributed by the newspapers of Manila to Doctor Javier, concerning the present political fight between Sergio Osmeña and Manuel Roxas, candidates for the position of President of the Philippines in the election which will take place on April 23, 1946.

Respondent's leadership has been recognized, not only by the party directorate, but even by the party organism considered and described by both litigants in this case as the supreme authority in the internal organization of the party—the national convention. In fact, both parties agree that on January 27, 1946, a national convention of the party met in Manila, and said convention was presided over by respondent Javier from the beginning up to the end.

It is true that no express action has been taken in said national convention to elect Javier. This failure to act on such an important question in the party organization has not been explained. The assumption of the position by respondent is undoubtedly in order, considering the fact that he was, and is, occupying the same in a temporary capacity and that no person who should occupy permanently the position of president of the party has been elected.

Unless another more plausible reason can be given—and none has been offered to us—it is logical to presume that the party was satisfied with Javier's leadership, had implicit faith and confidence in it, and that it considered superfluous to proceed with the election of the party president.

After the controversy between the parties in this case has arisen and the petition in the proceedings has been filed, Lorenzo Sumulong, one of the members of the party's directorate who sided and continue siding with petitioner and appeared in this case as one of the latter's counsel, being a candidate for representative in the second district of Rizal, has requested and obtained from respondent Emilio M. Javier, as president of the party, a certificate which would allow him to propose the appointment of election inspectors in all the municipalities of said district in the name and in behalf of the "Popular Front (Sumulong)".

The question has been raised whether the Supreme Court may review and overrule the pronouncements of the Commission on Elections as to facts. On this point the Supreme Court is divided.

The writer is among the members who maintain the affirmative view.

Article X, section 2, of the Constitution of the Philippines, provides:

"Sec. 2. The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections.

The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court.

"No pardon, parole, or suspension of sentence for the violation of any election law may be granted without the favorable recommendation of the Commission."

It can be seen from the foregoing that the Constitution does not place any limitation as to what decisions, orders,

and rulings of the Commission on Elections, or part thereof, shall be subject to review by the Supreme Court.

The reason is simple. As one of the members of the Second National Assembly which drafted the constitutional amendments creating the Commission on Elections, we were aware, as were all our fellow members, of the fact that the greater majority of the questions, the decision on which has been transferred from municipal councils and boards, Department of the Interior, and Courts of First Instance, to the Commission on Elections, are of fact, and it would be unwise to limit the reviewing power of the Supreme Court to questions of law alone.

We know that many of the controversies which the Commission on Elections would have to decide, although involving mostly questions of fact, are among those which would be very hotly contested by large groups of the community, the political parties; and that, to quiet them, specially the losing parties, it would be necessary for the Supreme Court, as the highest authority on controversial matters regarding the application and enforcement of the Election Code, to give the final word on them in case there is any doubt as to the correctness or fairness of the decisions of the Commission.

Under the negative theory, considering that the question as to who is the president of the party is one of fact, and it appearing that the Commission on Elections, after hearing and receiving the evidence, had arrived at the conclusion that respondent Emilio M. Javier is at present the true and legitimate president of "Popular Front (Sumulong)," the logical result will be the dismissal of the petition.

The writer, being in favor of the affirmative theory, decided to examine the evidence presented in order to determine whether the conclusions of fact of the Commission on Elections are correct or not. Our conclusion is that they are.

Petitioner's contention that he is the president of the party is based on the action taken on February 1, 1946, by a minority of four members of the directorate, including the petitioner and his two attorneys in this case, by which said minority members, representing themselves as acting for the directorate, accepted the resignation of respondent Javier and at the same time designated petitioner to take respondent's place as acting president of the party.

On the evidence presented in this case, it appears:

- (1) That the meeting of the minority of four members of the directorate on February 1, 1946, took place at the call of the secretary without the knowledge or authority of the president of the party.
- (2) That not all of the members of the directorate were called to the meeting.
- (3) That when the president happened to learn about the meeting called by the secretary, without the authority of said president, the latter sent to said secretary the day previous to the one set for the meeting a communication expressly dis-authorizing the call for said meeting and ordering that the notification sent to a few members of the directorate be cancelled.
- (4) That Jose Robles, Jr., one of the four minority members who attended said meeting, was designated by the group of minority members to be a member of the directorate only on February 11, 1946, that is, ten days after the meeting of February 1, when the four minority members, including said Jose Robles, Jr., met to accept Javier's resignation.
- (5) That after the party rift occurred, no one thought seriously about the resignation signed by Javier in 1942, at the time when, during the enemy occupation, the Japanese were waging all efforts to wipe out all vestiges and semblance of democracy in the Philippines, and ordered to said effect the dissolution of all existing political parties.

(6) That even in the false hypothesis that Javier signed said resignation voluntarily and not as a result of enemy pressure, at any rate everybody had considered it as having been withdrawn when nobody thought of unearthing it for one year since the party began functioning actively again after the liberation in February, 1945.

(7) That, under these circumstances, said letter of resignation, unacted upon for about four years, had become as worthless as a scrap of paper can be.

Consequently, the Commission on Elections was fully supported by the evidence when it pronounced that the action taken by the four minority members of the directorate in accepting Javier's resignation was null and void and could not have the effect of either ousting Javier from the party's presidency or replacing him by petitioner's invalid designation, made by a small minority convened against all principles of democratic processes, when it is admitted that the "Popular Front (Sumulong)" is a political organization governed, not by minority rule, but by majority rule.

Once more history is being repeated.

The present division in the ranks of said party, as shown in the record, has its analogy in the party strife which divided in 1934 the Democrata Party when, on the occasion of the political battle which divided the country on the independence act passed by the Congress of the United States, the leadership of the party was disputed between Juan Sumulong, one of the outstanding political figures of the country and founder of the "Popular Front (Sumulong)", and the writer of this opinion.

The question as to who was the president of the Democrata Party was put in issue in the courts of first instance of almost all the provinces of the country, the controversy reaching the highest court of the land. In almost all the courts of first instance and, lastly, in the Supreme Court the controversy was decided against Juan Sumulong, and the writer and his followers were able to propose in Manila and in the provinces the appointment of all election inspectors belonging to the Democrata Party.

The suggestion that in the present case the inspectors belonging to the "Popular Front (Sumulong)" must be equally divided between the two groups, one headed by Javier and the other by petitioner, is not in conformity with the decision rendered in the case of the Democrata Party where all the inspectors belonging to the party were granted to be proposed only by the prevailing group, and none was granted to the seceding group.

The reason for this action is based on the special political situation of the Philippines where the majority party has always been unnecessarily and dangerously too big and the minority always too small to be an effective check on the majority.

While the Supreme Court has been very willing to divide the inspectors between the two groups in which the Nacionalista Party was divided in 1922, it did not follow the same procedure with respect to the Democrata Party when it was divided in 1934. The purpose was to facilitate, in the interest of democracy, the division of a too big and powerful majority party, and to forestall the division in the minority party. The division of inspectors was, and is, one of the means of facilitating the division of a political party.

In his answer to the petition, respondent Javier complains against the biting language used in the dissenting opinion written by one of the members of the Commission on Elections, wherein the commissioner accuses said respondent of being deceitful and disloyal to his fellow party members and bosom friends, when there is nothing in evidence to substantiate said personal aspersions.

The complaint is well taken. There is nothing in the record to support said attacks against the person of respondent Javier. It is unfortunate that occasion has been given to constrain us to express our disapproval for such

groundless imputations. The imputations are not only groundless, but might give rise to the suspicion that a member of the Commission on Elections is taking side in the controversy which is dividing the contending parties in this case. This is against the purpose of the authors of the amendments creating the Commission on Elections to make it an impartial and independent body, which will consider all questions submitted to it with judicial criterion, disinterestedness, and equanimity.

Any remark that the Commission on Elections or any of its members might make, in making their decisions or opinions, must be based on a true knowledge of the facts in the case and, as was stated by one of the most venerated sages of old, "the achieving of true knowledge depends upon the investigation of things"; and, in the present case, the thing to be investigated, if the biting remarks have to find a support, is the evidence on record. We delved into said evidence and we found it wanting of anything to substantiate said remarks.

For all the foregoing, we vote for the dismissal of the petition, without pronouncement as to costs.

OZAETA, J., dissenting:

The decision of the Commission on Elections makes among others the following statement of fact:

"No hay duda ninguna de que la presente controversia sobre la presidencia del Partido Frente Popular (Sumulong) no hubiera surgido a no haberse registrado la disencion en el seno del Directorio en que algunos miembros son partidarios de que el Partido Frente Popular (Sumulong) apoye la candidatura para Presidente del Sr. Roxas y otros al Sr. Osmeña."

That statement was confirmed by both parties during the hearing of this case before this Court when Attys. Jose de Leon and Lorenzo Sumulong for the petitioner manifested that the group headed by Mr. Vicente Sotto supports the candidacy of Mr. Roxas, and Atty. Emilio M. Javier for the respondents likewise manifested that the group headed by him supports the candidacy of Mr. Osmeña.

It is therefore indisputable that the political party known as Popular Front (Sumulong) has split itself, for the purpose at least of the coming election, into two groups or factions, one supporting the candidate for President of the liberal wing of the Nacionalista Party headed by Senate President Roxas and the other that of the conservative wing of the said party headed by President Osmeña.

The real issue is, which of these two groups or factions of the Sumulong Popular Front Party is entitled to propose the appointment of the election inspectors conceded by law to said political party.

Section 5 of Commonwealth Act No. 657 provides among other things as follows:

"The appointment of one inspector and his substitute and one poll clerk and his substitute shall be proposed by the party which polled the largest number of votes at the preceding election, as hereinbelow specified, and one inspector and his substitute shall be proposed by the party which polled the next largest number of votes, if the same constitute at least ten per centum of the total number of votes cast in the said election. * * *

"The national directorates of political parties shall appoint their respective representatives in each legislative district, who shall submit in writing at least ten days before the date fixed for the appointment of the board of election inspectors, the names and addresses of the persons whom they propose to be appointed as election inspectors.

* * *"

Section 73 of the Election Code (Commonwealth Act No. 357) likewise provides:

"The inspectors and poll clerks and their respective substitutes shall be from among those proposed by the authorized representatives of the national directorates of the parties."

The foregoing provisions of the law on the subject have not been correctly applied by the Commission on Elections in deciding this case. In formulating the issue the Commission said:

"Dados los hechos que anteceden, la cuestion principal que debemos resolver es: quien es actualmente el verdadero y legitimo presidente del Partido Frente Popular (Sumulong), el cual, por medio del directorio de su partido, tiene derecho a nombrar representantes de su partido que han de someter los nombres y direcciones de las personas que deben ser nombradas inspectores de eleccion del Partido Frente Popular (Sumulong) en aquellos distritos legislativos en que dicho partido haya obtenido el siguiente mayor numero de votos, si dicha mayoria constituye por lo menos el diez por ciento del numero total de votos emitidos en dichos distritos legislativos."

And in the dispositive part of its decision it said:

"Por las consideraciones arriba expuestas, somos de opinion, y asi declaramos, que el Dr. Emilio M. Javier es actualmente el verdadero y legitimo presidente del Partido Frente Popular (Sumulong) hasta que sea relevado del cargo mediante eleccion en una convencion debidamente convocada para cubrir la vacante producida por la muerte del Sr. Juan Sumulong, y siendo el Dr Emilio M. Javier el presidente del Partido Frente Popular (Sumulong), tiene derecho, por medio de su Directorio, a nombrar las personas que han de proponer los inspectores a que tiene derecho el Partido Frente Popular (Sumulong) en aquellos distritos legislativos donde dicho Partido haya ocupado el segundo lugar siguiente al mayor numero de votos si constituye, por lo menos, el diez por ciento del total de votos emitidos en dichos distritos legislativos."

The law vests in the directorate of the party the right to appoint representatives in each legislative district who shall submit in writing the names and addresses of the persons whom they propose to be appointed as election inspectors.

It does not vest that right in the president of the party, as the Commission on Elections held in this case. The president of the party is a mere agent of the directorate, and not vice-versa. In reality, therefore, the question as to who is the legitimate president of the Sumulong Popular Front Party is immaterial for the purpose of proposing the appointment of election inspectors', for, as we have seen, the right to so propose is vested in the directorate and not in the president.

But since, as found by the Commission, the party in question, and with it its directorate, has split itself into two groups or factions, I hold that it would neither be just nor conducive to a clean and honest election as required by law, to grant to one group or faction all the election inspectors in a given district to the exclusion of the other group or faction. One faction is as much entitled to election inspectors as the other.

To apply and at the same time rectify the disputed conclusion of the Commission that Mr. Emilio M. Javier is the legitimate president of the Sumulong Popular Front Party and, as such, is the one who has the right, through its directorate, to name the persons who will propose the election inspectors, the Court says that "the members of the Directorate who have sided with him (Javier) constitute the legitimate Directorate of the Party." In other words, the members of the directorate who do not side with Mr. Javier are outlawed and ignored. Thus Mr. Javier is virtually allowed to control and monopolize the party. To that I cannot give my assent.

Respondent Javier's claim to the presidency of the party is not invulnerable. It is precarious. He has never been elected by the party to that position. He was merely designated by the late president, Don Juan Sumulong, to act as his substitute during his illness. Since the demise of President Sumulong, Mr. Javier has been acting as president de facto of the party merely by tolerance of its members. They allowed him to act as such president as

long as he was loyal to the party. At any rate, even if his title to the office of president were unquestionable, it was not he who had the right to exact loyalty from the directorate or from the party itself; it was the party that had the right to exact loyalty from him.

Now, the petitioner contends that respondent Javier has been disloyal to the party because he has disregarded and contravened the policy embodied in the resolution adopted by the convention of the party held on January 27, 1946, over which he presided and during which he voiced no objection to that resolution. That contention, I think, is well founded. As a matter of fact, it was that conduct of Acting President Javier that precipitated a split in the directorate and in the party itself between the members who disapproved of his conduct and the members who sided with him.

The majority opinion sustains the position of respondent Javier and of those who side with him and practically outlaws the petitioner and other members of the directorate who insist on respecting the policy and commitments of the party as expressed in the resolution adopted by the convention of January 27, 1946. That, I think, is wrong. As pointed out in the dissenting opinion of Mr. Justice Paras, the resolution adopted by the convention of the party was binding upon all the members under the express provisions of the constitution of the party. That being so, it seems to me unlawful and unjust to outlaw those who are loyal to the party altho not loyal to the acting president. The fact that under section 11 of the rules and regulations of the party "the president shall be the supreme representative of the party," does not support the theory of the majority. If the president is but a representative of the party, his will is supreme only in so far as it reflects the will of the party. The moment he ceases to represent the will of the party, he as de facto president cannot be recognized as the supreme representative of the party. Those who are loyal to the party cannot be loyal to him, for that would be incompatible with their loyalty to the party itself.

In as much as neither the petitioner nor the respondent Javier has been duly elected president of the party, and each heads one of the two groups or factions into which the directorate and the party have been split, I hold it to be just and proper to give them and the two factions respectively headed by them equal standing and equal right before the law.

This is not a case of secession as contemplated in section 72 of the Election Code, which provides that: "No inspector shall be granted to any branch or faction which has seceded from its respective party, or from the party resulting from their fusion." [1] This is a case where a minority party split itself, and with it its directorate, into two more or less equal branches or factions, each supporting the candidate for President of either of the two factions of the majority party, which has likewise split itself into two wings —Liberal and Conservative. Section 8 of Commonwealth Act No. 725 gives the two wings of the majority party equal representation in the boards of election inspectors, obviously to insure a clean and honest election; and, by analogy, it would be against the spirit and purpose of the Election Law to give all the minority's inspectors in a given district to one faction of the minority party to the exclusion of the other faction. (*Sumulong vs. Commission on Elections*, 71 Phil., 12.)

The practical, equitable, just, and lawful way of deciding this case, in my opinion, is to divide equally the number of inspectors corresponding to the Sumulong Popular Front Party in every city or municipality where said party polled at least ten per centum of the number of votes cast in the last national election in this manner. The election inspector for every odd-numbered precinct shall correspond to one faction, and that for every even numbered precinct to the other faction, the representatives of the two factions to draw lots to determine which faction will get the odd-numbered precincts and which the even-numbered.

PARAS, J ., with whom concur HILADO and Bengzon, JJ. dissenting:

As a general rule, cases brought to this Court on appeal by way of certiorari are decided on questions purely of law, on the assumption that the findings of fact made by an inferior tribunal are conclusive and final. The Constitution (Article X, section 2), however, confers on the Supreme Court absolute power to review the decision of the Commission on Elections. This power to review necessarily comprises not only conclusions of law but also of fact, the grant not limiting it to either. Neither the Congress by law, nor this Court, by rule of court, could validly impose that limitation. And, whether the point is raised or not by either party, we cannot close our eyes to the constitutional mandate. But even under the general rule, when the statement of facts appearing in the decision of the Commission makes reference to conclusions drawn from documentary evidence, any error in said conclusions is an error of law which this Court can rectify.

The dispositive part of the decision of the Commission on Elections reads as follows:

"Por las consideraciones arriba expuestas, somos de opinion, y asi declaramos, que el Dr. Emilio M. Javier es actualmente el verdadero y legitimo presidente del Partido Frente Popular (Sumulong) hasta que sea relevado del cargo mediante eleccion en una convencion debidamente convocada para cubrir la vacante producida por la muerte del Sr. Juan Sumulong, y siendo el Dr. Emilio M. Javier el presidente del Partido Frente Popular (Sumulong) tiene derecho, por medio de su Directorio, a nombrar las personas que han de proponer los inspectores a que tiene derecho el Partido Frente Popular (Sumulong) en aquellos distritos legislativos donde dicho Partido haya ocupado el segundo lugar siguiente al mayor numero de votos si constituye, por lo menos, el diez por ciento del total de votos emitidos en dichos distritos legislativos."

This order is clearly erroneous, because section 73 of the Election Code (Commonwealth Act No. 357) concedes to the directorate the right to designate the persons who should propose the names of representatives of the party in the board of inspectors. It provides: "The inspectors and poll clerks and their respective substitutes shall be from among those proposed by the authorized representatives of the national directorates of the parties." The question, therefore, as to who is the president of the party is, for purposes of this case, neither important nor material.

The old and new members of the directorate of the Popular Front Party are known to the Commission. The president casts his vote only when there is a tie among the directors. (Rule 13, Constitution of the Popular Front Party.) From the records it is quite easy to determine which group constitutes the majority.

Should there be any necessity of ascertaining who are the secessionists, the records disclose facts upon which the Commission could have, during the hearing before it, made a finding. It appears that sometime in January, 1946, a convention of the party, called and presided over by Dr. Emilio Javier, was held in Manila, and that in accordance with the minutes prepared by the secretary and signed by some of the directors, a definite resolution as to the stand of the party was unanimously approved. Said minutes are valid even without the signature of the acting president, for, as shown by other documentary evidence, such signature is not necessary under, or required by, the rules of the party. Indeed, the approval of said resolution is not denied. Now, in conformity with said rules, the resolution was, and is, binding upon all members.

"The commitments made in the political program or in the special resolutions of the national convention, as well as the provisions of the rules and regulations approved by the Directorate, shall be binding upon all affiliated members and upon all the organized units of the party." (Rule 10, Constitution of the Popular Front Party.)

Anyone who voted against it, or was not agreeable thereto, and does not choose to abide by it, must perforce be considered a secessionist.

The evidence of the respondent adduced before the Commission on Elections shows that the very directorate of

the group headed by Dr. Javier approved the following resolution:

"6. The Directorate voted to give Ex-Congressman Igmedio Nietes and Atty. Lorenzo Sumulong inspectors if they file their certificates of candidacy in the name of the Popular Front."

The records of the Commission will reveal the candidates who have filed their certificates in the name of, or for, the party. There can thus be no question that said candidates are by virtue of the resolution hereinabove quoted the ones entitled to propose the inspectors of the party. Good faith and decency demand strict compliance with the resolution.

My vote, consequently, is to set aside the appealed decision and to remand the case to the respondent Commission for it to determine what is the will of the directorate of the Popular Front Party.

Decision affirmed.

[1] If one of the two groups is to be declared a secessionist, it certainly must be the one who refused to obey the resolution adopted by the convention of the party, namely, the group headed by respondent Javier, and not the group headed by the petitioner, as the majority opinion insinuates.

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