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APERTURA DE LA SESION

Se abre la sesión a las 3:40 p.m., ocupando el estrado el Presidente, Hon. Claro M. Recto.

EL PRESIDENTE: Se abre la sesión.

DISPENSACIÓN DE LA LECTURA DE LA LISTA Y DEL ACTA

SR. MARAMARA: Señor Presidente.

EL PRESIDENTE: Señor Delegado por Cebú.

SR. MARAMARA: Pido que se dispense la lectura de la lista y del acta, dándose ésta por aprobada y por presente un quórum.

EL PRESIDENTE: ¿Hay alguna objeción a la moción (Silencio.) La Mesa no oye ninguna. Queda aprobada.

ESTUDIO Y CONSIDERACIÓN DEL PROYECTO DE CONSTITUCION CONTINUACION

(Continuation.)

EL PRESIDENTE: Léanse por orden las enmiendas.

EL SECRETARIO: Por los Delegados Lim y Vinzons:

Del Delegado Señor Lim: En la página 12, líneas 18 al 20, suprimanse las palabras: "hold any other office or employment in the Government without forfeiting his seat, nor shall any such member".

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Del Delegado Señor Vinzons. En la página 12, líneas 17 al 20, suprimanse las palabras: "may hold any other office or employment in the Government without forfeiting his seat, nor shall any such member."

MR. LIM: May I have the floor?

EL PRESIDENTE: Su Señoría tiene la palabra.

SR. MILLAR: Señor Presidente, quisiera decir alguna información al Delégado por Manila antes de que comience su discurso. De acuerdo con su enmienda, al inciso (9) quedará redactado en esta forma: "Ningún diputado a la Asamblea. Nacional podrá ser nombrado para cualquier empleo civil bajo la autoridad del Gobierno de Filipinas que haya sido creado cuya retribución se haya aumentado durante dicho tiempo."

SR. LIM: Así es.

SR. MILLAR: ¿No podría aceptar Su Señoría una enmienda en el sentido de que al final de la página 13-A, se

convierta el punto (.) en coma (,) y que se añada lo siguiente: “ni podrá ocupar algún otro cargo o empleo en el Gobierno o alguna empresa del mismo.”

SR. LIM: Si acepto esa enmienda de Su Señoría, perdería finalidad la enmienda que presente, de eliminar las palabras que hay en las líneas 18 al 20 del texto inglés, porque volveríamos a la misma cosa.

SR. MILLAR: El proposito de Su Señoría, al presentar la enmienda, es únicamente hacer que no puedan ser nombrados los legisladores para algún cargo que haya sido creado durante el tiempo de su ejercicio o para algún cargo cuya remuneración haya sido aumentada por la Legislatura de que ha sido miembro.

SR. LIM: Si Su Señoría tuviera la paciencia de oirme...

SR. MILLAR: Para aclarar nada más; para ganar tiempo.

SR. LIM: Esa es su finalidad; ésa es la idea.

SR. MILLAR: De modo que su idea es que los legisladores no puedan ser nombrados para ocupar algún puesto que haya sido creado por la Legislatura de que ha sido miembro.

SR. LIM: Ese será el efecto.

DISCURSO DEL SR. LIM

MR. LIM: Mr. President and Gentlemen of the Convention: Paragraph 9 of section 3 of the Article on the Legislative Department, as contained in the draft, provides that “no member of the National Assembly may hold any other office or employment in the government without forfeiting his seat.”

If this prohibition is read in connection with section 2 of Article 12 of the draft, page 10, dealing with the Civil Service, wherein it is provided that “public officers and employees in the Civil service shall not engage directly or indirectly in political activities or take part in any election except to vote” it is apparent that the prohibition referred to in the permission first quoted refers mainly and practically to cases in which a member of the National Assembly is simultaneously a secretary of department.

In other words, this provision if approved would close the door entirely to the possibility of adopting in our country what is “known as the parliamentary system of government, in contra-distinction to the presidential system.

It is not my purpose to explain the merits and demerits of each of these two systems, for it is a granted premise that in the meantime we should adopt the presidential system, to which we have been used. It is neither my purpose to show the advantages of having our Cabinet

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drawn from members of the National Assembly, as is being done actually in our government.

I only wish to repeat the remarks already made that a presidential system under the Philippine Commonwealth and much more so under an independent government would so entrench the party in power that it would be almost impossible for any minority group to win except by means of a revolution. Under the presidential system, a president is elected by the people, with the backing of his party. Nowadays, the president of the United States is probably the most powerful elective official in the world. He is considered the head of the administrative as well as of the legislative branches of the government by virtue of his leadership of the party that controls Congress. Under the system proposed in the draft, the President of the Commonwealth, later of the Philippine Republic, will

have the same powers and privileges.

On the other hand, under the cabinet system as adopted in England after years of struggle culminating in the passing of the Reform Act of 1832, the Cabinet or the ministry derives its powers from the House of Commons and not from the King. The House of Commons alone determines the fate of cabinet and ministries.

Before that year the functions of ministers were merely administrative, as they are under our present government, and Parliament was free to deal as it pleased with their legislative proposals without forcing them to resign their seats.

In England the Cabinet is composed of the Chief Ministers of the Crown, they have seats in Parliament and are jointly responsible for the government of the country. The Prime Minister, a party leader, although appointed by the Crown, derives his powers in reality neither from the Crown nor from the Parliament, but from the electorate; and to the electorate he could appeal if his party so desired.

The Cabinet, composed of colleagues selected by the Prime Minister, thus practically, though indirectly, becomes an executive committee acting on behalf of the electorate, that is to say any, of the majority which voted their party into power.

In actual practice, the responsibility of the Cabinet is to the House of Commons an adverse action of which on an important matter may lead to the resignation of the Cabinet as a whole.

Functionally, the Cabinet may be described as a committee of advisers, with seats in the Legislature, united by political principles, and preserving unanimity in public, under the leadership of the acknowledged head of the party commanding a majority in the lawmaking body by which, with the assent of the executive they have been appointed to positions controlling the principal government departments, to act through him as the executive's sole advisers, and to be severally responsible to the executive, the prime minister, parliament and the people, for their individual and collective actions, so long as they are supported by a majority of the Legislative.

In the United States as well as in our country, the Cabinet is composed of the heads of the executive departments, whose functions is to advise the President or the Governor General on important questions of policy. The Cabinet members are appointed by the President or by the Governor General and are subject to confirmation by the Senate; they are responsible only to the President or the Governor General and may be removed by him at will.

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It may be true that the greatest virtue of the presidential system is its stability; but such stability may be brought about only as a consequence of the continuous victory of the party in power. This, in turn, may lead to dictatorship, which can only end in a revolution.

On the other hand, the cabinet system has its greatest defect instability, because of the possible frequent changes of government. However, an analysis of the idiosyncrasy of our people, who have been accustomed to support the party in power in our government, will show that there will be no danger of such frequent changes upon the slightest excuses.

In truth and in fact, we have been accustomed to the theory of cabinet responsibility. The Spanish governor General was in a sense the lawgiver in the Philippines ; for while laws at that time came from Spain, he was empowered, with the advice of the Consejo de Administracion, to make the necessary rules and regulations. The government established by the Malolos Constitution was of the cabinet type. The Philippine Commission, which existed from 1901 to 1916, was composed in the majority thereof of members who held both executive and legislative positions. At present we are nearer the cabinet system than the presidential system, for two senators

and two representatives have been appointed to the Cabinet.

When I speak of the cabinet system, I do not mean the type which exists in France or which once obtained in Spain and Italy. But I refer to the cabinet system which has recently developed in post-war Europe or to that which is now found in England. In other words, I mean one of the cabinet type with a strong executive.

Quoting from the French writer, B. Mirkin Gueszévitch, in his work entitled *Le Nouvelle Tendance Du Droit Constitutionnel*, we read the following: "In our concept the real cabinet or parliamentary regime gives to the executive a stronger power than to the executive under the regime of separation of powers."

I wish to repeat that it has not been my purpose to advocate a parliamentary system of government

The purpose of the proponents of the amendment for suppressing from the draft the prohibition referred to is to make the constitution as flexible as possible so that it could meet the different situations which the country may find itself in, in the course of its existence.

We beseech you not to close the door to the possibility of adopting a different system of government should the need of the country make it necessary in the future.

MR. BUENO: Mr. President, will the Gentleman yield to a question?

THE PRESIDENT: The Gentleman from Manila (Mr. Lim) may yield if he so desires.

MR. LIM: With pleasure, Mr. President.

MR. BUENO: To whom would be the responsibility of a member of the National Assembly after he has become a cabinet member? Will he be responsible to the Executive or to the Legislature or the National Assembly?

How about a member of the Cabinet under the Parliamentary system to which the Gentleman has alluded? Is it not a fact that in England the ministers, including the prime minister, are responsible jointly and severally to the House of Commons and not to the king? According to the theory in England, each minister must certainly answer for whatever political act he does.

MR. LIM: But the Gentleman will believe with me that if we leave the door open members of the Cabinet could be drawn from the lawmaking body, and, together with the Vice President, they can give counsel to the President. In that case the members of the Cabinet will be directly responsible to the Legislature, or rather to the National Assembly. What we mean with this amendment, is to leave that door open.

MR. BUENO: Does not the Gentleman think that he would be placing the Cabinet in a very embarrassing position, with the proposed amendment?

MR. LIM: Certainly not, the purpose of the amendment is to make possible the approval of an act empowering the members of the Cabinet who are members of the National Assembly to be official advisers whose counsel must be followed.

MR. BUENO: Supposing that the President belongs to a party different from the party in control of the National Assembly, which shall then prevail, the decision of the Cabinet or that of the Executive?

MR. LIM: If we have the parliamentary system of government, the decision of the Cabinet.

MR. BUENO: We have to adopt either the parliamentary or cabinet system or the presidential system. We can not very well adopt a parliamentary or cabinet system of government. Under this system, the Chief Executive must be impartial. But as long as the occupant of Malacanang is a party man, I do not think we can have such type of government.

MR. LIM: That may be true.

MR. BUENO: For that reason the question whether we should have a parliamentary system or a presidential system ought to be decided first.

SR. ORENSE : Para algunas preguntas. ¿No cree Su Señoría que, bajo su enmienda, un miembro de la Asamblea Nacional puede formar parte del Gabinete?

EL PRESIDENTE: ¿Accede el orador?

SR. LIM: Si, Señor.

SR. ORENSE : ¿No cree Su Señoría que, bajo su enmienda, un miembro de la Asamblea Nacional podría formar parte del Gabinete?

SR. LIM: Así es.

SR. ORENSE : Entonces, ese miembro de la Asamblea y al mismo tiempo miembro del Gabinete tendría en ese caso dividida su lealtad: una parte a la Asamblea y otra al Ejecutivo.

SR. LIM: No puede haber lealtad dividida, si tenemos en cuenta que la lealtad de un funcionario es al pueblo y no a ningún cuerpo particular del Gobierno.

SR. ORENSE : ¿No cree Su Señoría que podría repetirse el triste espectáculo de que tal legislador como Miembro de la Legislatura vote y apruebe un bill, y cuando este llegue al Poder Ejecutivo recomiende que lo vete, como ha ocurrido y está ocurriendo?

SR. LIM: No concuerdo con Su Señoría en fesa opinión. No sé de ningún caso como ése.

SR. RAFOLS: Para una cuestión de orden. Parece que el Caballero de Batangas está aludiendo a algún Miembro de esta Asamblea. Pido que se descarte esa alusión.

SR. ORENSE : Si fuese el Delegado Rafols el aludido, yo la retiraría.

SR. VENTURA : Señor Presidente, voy a hablar en contra de la enmienda.

EL PRESIDENTE: El Caballero de Ilocos Norte tiene la palabra.

DISCURSO DEL SR. VENTURA

MR. VENTURA: Mr. President and Gentlemen of the Convention: As announced by Delegate Lim, his proposed amendment will leave the door open for the establishment in the Philippines of a parliamentary system of government. This provision, paragraph 9 of section 3 of the article under discussion, has for its purpose the establishment of a presidential form of government in the Philippines, Because it is believed that said form of government is better than one of the parliamentary type. In a parliamentary system of government the members of the Cabinet are chosen by the Chief Executive of the nation from among the men whose names are submitted by the leader of the party in power in the Legislative body. The leader is usually requested and called upon by the Chief Executive to form his Cabinet, with him as the Prime Minister, The Prime Minister submits the list of men to constitute the Cabinet, which will serve as adviser to the Chief Executive. For this reason, the members of the Cabinet are responsible to the Legislative Body because they are the choice of the leader of the party in power. As a result. Gentlemen of the Convention, the Chief, Executive becomes a nominal or titular head; and the real executive of the nation is the cabinet itself, This is the practice in England at the present time, as well as in France and also in Italy, Belgium and other countries in Europe. This system of government is followed generally in

monarchial countries.

The disadvantage of the parliamentary system, the Cabinet exercises the functions of the Chief Executive in the actual execution of the laws; but is at the same time responsible to the Legislative Body. It complies with or carries out the policies of the party in power and the Legislative Body, so that there is in effect a blending of the legislative power and the executive power in one body the Cabinet. That would be violative of the principle of the separation of powers underlying the Jones Law under which our government has been established, and more so, the Constitution that we are drafting.

In a parliamentary system of government, there is instability in the relations between the Chief Executive and the Legislative Body. There are frequent changes of the Cabinet, which are brought about whenever the Legislative Body loses confidence in the Cabinet. Upon a vote of censure against its members, the Cabinet resigns en masse in order to give the Chief Executive the opportunity to form a new Cabinet. The new party in power submits again another list of members to constitute the Cabinet. These changes may take place even within forty-eight hours as it has often happened in France. Hence, the instability of the government.

On the other hand, in a presidential form of government, the Cabinet, or the Members of the Cabinet, appointed by the President, are directly responsible to the Chief Executive. They are his advisers; they are not responsible to the Legislative Body. They carry out the policies of the President without fear of losing their office. The President is powerful. He can carry out the policies of the nation and also of the party without being afraid of losing the confidence of the Legislative Body. We need, as it can be seen in the draft of the Constitution, a Chief Executive with strong executive power. In a presidential form of government, the President, although he belongs to a party which is not in power, may carry out his policies throughout the term of his office without any interruption or without fear of criticism from the leaders of the Legislative Body. And for this reason there is continuity and stability in the carrying out of his policies more conducive in effect, to the welfare of the nation.

In the Philippines at present, we have a mixture of the parliamentary system and the presidential system. But the situation is really improper because it does not carry or bring with it the advantages of the parliamentary system nor does it carry out or fulfill the purposes of a real presidential form of government.

I will show you the defects of the system that we now have. Two Members of our House of Representatives have been appointed Secretaries of Department to become Members of the Cabinet, and as such, advisers to the Governor General. These men owe their allegiance to two branches of the Government, first to the Chief Executive who appointed them and secondly, to the Legislative Body to which they belong. In other words, they have two masters whom they are serving.

We have read recently in the papers of the controversy regarding the passage of laws in the House of Representatives. When the Governor General asked for the real stand of his legislator cabinet members on the measures passed by the Legislature, they could not help but support the Governor General. That created a great furor in our legislature. It brought about severe criticism from the Members of our Legislature. The legislators had expected them to be loyal to the Legislature to which they belong. But, instead, they turned disloyal to the policy, the purpose, and the aims of the Legislature. And they could not do otherwise because they owe their appointment to the Governor General. Such mixed system is really dangerous. I have pointed out that the members of the Cabinet do not serve fully the Legislature to which they belong.

We should have either a real parliamentary system of government or a presidential system of government. We should never have a hybrid of the two systems. The proposition of Delegate Lim is to have the door open for the establishment of a parliamentary form of government.

No, at any time depending upon conditions and circumstances. Not only that; it will also make possible the establishment again of a hybrid system of government in the Philippine Islands. We can never have a successful government based on a hybrid system. We must have either one or the other.

I advocate a presidential form of government. A Presidential form of government, as we have already experienced and which has been in operation in the United States and in most of the republican governments in the Americas, both North and South, has always proved to be a success; whereas a parliamentary system of government which was introduced in some of the republics of Central America has proved to be a failure.

Delegate Lim has stated that the people of the Philippine Islands are not like those of France, of Spain or of England who are fond of censuring the Cabinet and of frequent changes in the Government. That may be true for the present because we do not as yet have a parliamentary system of government. But, wait until the time when a parliamentary system of government has been established in the Philippines when the Members of the Legislature will be given a chance to pass a resolution of lack of confidence in the Cabinet which may precipitate the resignation of all its members.

The practices of other nations will always be followed by the people of the country. The practices under the presidential form of government of the United States were introduced in the Philippine Islands; we have followed them through the years. So that when the parliamentary system of government is established here, the practices of England, France, Belgium and Italy will, without doubt, be also followed here. There will always be frequent changes of government. It will be dangerous to establish here a parliamentary system for the reason that the period of the Commonwealth and the early period of the independence should be constructive periods in our life as a nation. We shall need stability in carrying out the policies of the President and also in the relations between the Chief Executive and the Legislative Body.

MR. MONCADO: Mr. President, the time of the Gentleman has already expired.

SR. RAFOLS: Señor Presidente, pido que se concedan dos minutos mas al orador.

EL PRESIDENTE: Hay alguna objeción? (Silencio.) La Mesa no oye ninguna. Puede proseguir el Dele gado por llocos Norte.

MR. VENTURA: (Continuing). Going back to the members of the Cabinet. In a presidential form of government, the members of the Cabinet are really advisers of the Chief Executive. They can center their attention on the policies of their departments as well as on the policies of the President of the Nation. Whereas, in a parliamentary system of government, the members of the Cabinet are not really the advisers of the Chief Executive; they are the leaders of the party in power. In other words, the Members of the Legislature who are appointed members of the Cabinet exercise legislative functions. In a presidential form of government, the Chief Executive although attacked throughout his term by the party in power in the Legislative Body, is not perturbed at all. He is free to carry out his policies. In that way there is tranquility, there is stability, there is unity in his policies for the solution of great problems of the nation.

It has been said here that a parliamentary system of government was established by the Malolos Constitution, and that we should also follow the same system adopted by that Constitution. Our answer to this statement or argument of Delegate Lim is this: Upon the separation from the mother country or upon the declaration of Philippines independence by the Malolos Government, the presidential form of government had not as yet been introduced in the Philippines. That parliamentary system of government was then very popular, as it still is in England and in France and in Italy, and the leaders of our people in Malolos then thought of introducing that system in our Constitution not knowing the advantage of the presidential form of government. But, the

presidential government in operation in the Philippines since the implantation of American sovereignty has proved a great success. For this reason, Mr. President and Gentlemen of the Convention, I am in favor of the establishment of a presidential form of government and, therefore, of the retention of the provisions of the draft, and against the proposition advantage by Delegate Lim.

EL PRESIDENTE: ¿Hay algún otro turno a favor de la enmienda?

SR. VINZONS: Para un turno a favor.

EL PRESIDENTE: Tiene la palabra el Delgado por Camarines Norte.

DISCURSO DEL SR. VINZONS

MR. VINZONS: Mr. Presidente and Gentlemen of the Convention: One of the main propositions which should have been debated at great length by this August Assembly is: whether we should adopt a parliamentary or a presidential form of government. Most governments of the world have been classified by political science authorities into two main divisions those following the parliamentary system of government; and those following the presidential system of government. An illustration of the latter type is the great and powerful Commonwealth State of the United States of America from whom this Convention owes the grace of meeting in this session to formulate a fundamental law. Another great nation which has been cited as illustration of the former system is the British Empire, conservative in its tendencies and stable in its government. But if I were to decide, Mr. President, on the kind of government I want, I would not have any reason to hesitate and say that I shall unequivocally vote for the presidential system. The Presidential system in the United States, Mr. President, has been characterized with great success in the operation of its different branches. On the other hand, we have the examples of parliamentary systems of government like those of France, of Spain, of Haiti, of Chile in South America, and other countries in the world which have been characterized by great instability. Ministers fall and rise by the mere caprice of the Members of the National Assembly or of the Legislature, and there has never been a fixed policy in the government carried on by the same set of men. If I were to choose, Mr. President, between the regularity of occurrence of the various succeeding administrations in a presidential system, so vividly described as resembling the recurrence of the tide, and of the instability in a parliamentary system, I would invariably cast my vote in favor of the presidential system.

But, Mr. President, our proposal now is not that this Assembly should adopt the parliamentary system of government. I am in favor of the presidential system. But between the presidential system and the parliamentary system is a realm of shadow where the two merge together in order to form a government that shall be as consummate and as perfect as possible. The history of the Cabinet system, Mr. President, was said to have begun in England; but its propagation has not been successful in the other countries which have adopted it. On the other hand, Mr. President, there are countries with the same traditions and under the same conditions as those of the Filipino people, which have adopted a medium between the parliamentary and the presidential system of government.

The parliamentary system of government has been characterized by two main features, namely, first, the complete and immediate responsibility of the Cabinet to the Legislature; and second, the assumption by the Cabinet of all the functions of the executive in the Government and a direct participation by the Cabinet in the functions of the Legislative. The writer and constitutional scientist, Mr. Beckhead, has well described the Cabinet in a parliamentary system as a hyphen that joins the buckles, that fasten the legislative and the executive departments.

The instability and the frequency of change of ministers under the parliamentary system has been to a great extent minimized by the suppression of most of the outstanding characteristics of such a system so as to give a certain

degree of identity to a system as belonging neither to the presidential nor to the parliamentary. I would want to call the attention of the Gentlemen of the Convention that the draft itself contains the elements of a parliamentary system of government. I want to cite, in the first place, the provision in section 5, Article 7, page 15 of the draft. It provides as follows: The secretaries of Departments upon their own initiative or upon the request of the National Assembly may appear before, and be heard by, the Assembly, on any matter pertaining to their Departments.”

I recall quite well, Mr. President, that one of the speakers on the draft has so very well taken care of discussing the same topic that I am taking up now. I believe that it was Delegate Locsin from Negros who made the comment that this provision contains the element of a parliamentary system of government.

MR. VENTURA: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. VINZONS: Willingly.

MR. VENTURA: Is it not a fact that, even under the presidential form of government, any member of the Cabinet or any executive secretary may, at the request of the present Legislature even before the appointment of the new department secretaries who are members of the Legislature, appear before this body to explain certain items of the appropriation, in spite of the fact that it does not mean that there is a parliamentary system of government here in the Philippine Islands?

MR. VINZONS: I shall answer the Gentleman by saying that the practice of having members of the cabinet appear in the Legislature has never been adopted in a purely presidential type of government as in the United States. The secretaries of departments in the United States have never been given the privilege to appear before the Congress in order to explain the appropriations Act, or any measure pertaining to their departments. On the other hand, this practice has been followed in the Philippines, which has adopted, as I said, elements of both the parliamentary and Presidential systems, and in certain South American countries which likewise have adopted a system mid-way between the presidential and the parliamentary type.

I have stated that this provision of the draft in section 5 contains the elements of a parliamentary system of government. May I quote from an authority, Mr. President, that the entry of the ministers into the chambers is considered by some writers as an essential element in cabinet government. In fact, Sidney Lowe is of the opinion that it is the root of the whole parliamentary form of government.

There is another provision in the draft to which I would like to call the attention of this august Assembly, the one appearing in section 5, paragraph 1, page 14.

It states that the President shall submit, within fifteen days of the opening of the regular session of the National Assembly, a budget of receipts and expenditures which shall be the basis of a general appropriation bill. It further states that the National Assembly may not increase the appropriations recommended by the Chief Executive. This, Mr. President, grants the power to submit an appropriation act and at the same time limits the power of the National Assembly to increase the appropriation recommended by the Chief Executive. I wish to call your attention, Gentlemen of the Convention, to the mistaken concept presented by the preceding speaker when he said that the Malolos Constitution adopted a Cabinet system of government. There can be no graver travesty against the draft of the Malolos Constitution than to state that it adopted a parliamentary form of government. I would like to call your attention to Article 43 of the Malolos Constitution which provides as follows, in the same way as is provided in Section 5, paragraph 3, page 15 of the draft: “Los secretaries de gobierno tendrán entrada en la Asamblea con derecho a que se les conceda la palabra siempre que la pidan.” That is the provision of Article 43 which gives to the members of the Cabinet the right to appear in the Assembly. But besides that, Mr. President,

there is a further provision which reads as follows;

“Artículo 52. El Representante de la Asamblea que acepte del Gobierno pensión, empleo o comisión con sueldo, se entenderá que renuncia a su cargo.

“Exceptúanse de esta disposición el empleo de Secretario de Gobierno de la República, y otros cargos señalados en leyes especiales.”

A close observation will reveal that this is very analogous to the provision of paragraph 9 of section 3 of the draft which prohibits any Member of the National Assembly from accepting any position in the Government without forfeiting his seat. The second paragraph of article 52 of the Malolos Constitution contains this provision “Exceptúanse de esta disposición el empleo de Secretario de Gobierno de la República, y otros cargos señalados en leyes especiales.” This paragraph of article 52 of the Malolos Constitution is practically the essence of the proposal now before this august Assembly — to except from the prohibition of occupying any other position in the government during his term of office the members of the Cabinet or Department Secretaries. And we want to adduce certain reasons why we advocate this proposition. I shall cite another authority, Mr. Keith, in his work “Responsible Government in the Dominions.” I refer especially to the same provision in the draft of the constitutions of several selfgoverning presidential dominions that any Member of the National Assembly who accepts a Cabinet portfolio has to resign his seat in the National Assembly. This is how Mr. Keith puts it in his book: In most of the dominions “the inconsistent and stupid practice of requiring ministers after accepting office to vacate their seats prevails as it did in England until very recently, but in some of the Australian states the contrary practice has been adopted.” No less an authority that Keith brands this practice as inconsistent and stupid.

In South America, we have many examples. The Gentleman from Ilocos Norte, my former Professor. Delegate Ventura, has very well stated that in South America the presidential system is in vogue. It was adopted in Argentina; it was adopted in Brazil. But let me quote certain provisions in the Argentinian and Brazilian constitutions which adopt features of the parliamentary form of government. In Article 92 of the Constitution of Argentina, there is a statement as follows: Ministers may attend sessions and take part in debate without vote. And in Articles 87 to 88 of the same Constitution, it provides: Acts of the President shall be countersigned by the ministers.

The Brazilian Constitution, Mr. President, is more emphatic in its adoption of the presidential form of government. It provides that the ministers may not appear in either Chamber; that they may communicate with the Legislature only in writing; that the term of office of the President shall be fixed. The only difference between the Brazilian system and that of the United States is the provision requiring that the acts of the President be countersigned by the Ministers.

With these examples before us, Mr. President and Gentlemen of the Convention, which demonstrate the most recent tendencies in political government throughout the world, I would want to cite an instance where a certain Body or a group has adopted exactly the opposite principle. I wish to cite, in the first place, the case of Italy. Italy, after the world war, was under the parliamentary system of government. Therefore, when Mussolini assumed the office of Prime Minister he was considered responsible to the Legislature. His Fascist Party having risen into power, he caused to be passed certain amendments to the Constitution making the Ministers responsible no longer to the Legislature, but to the Crown and ultimately he became a dictator, thereby putting to an end the parliamentary system.

THE PRESIDENT: The time of the Gentleman has expired.

MR. LIM: Mr. President, I yield five more minutes.

THE PRESIDENT: The Gentleman may proceed.

MR. VINZONS: May I call the attention of my beloved colleagues that the Gentleman from Zambales, Mr. Labrador, emphasized last night the fact that we have reduced greatly the power of the Legislature and unduly increased the power of the Chief Executive. In fact, it could be gleaned from a cursory reading of the draft that the Constitution establishes a very powerful Executive and a very weak Legislature. The question that I want to propound to the Gentlemen of the Convention is this: Having adopted this tendency in modern constitution-making of vesting greater powers of government, in the President, and abolishing the primacy of the Legislature, should be a sort of check and balance in order that the President will not commit any abuses?

I have an authority to show that a similar tendency in other countries has permitted the establishment of a dictatorship. This authority states as follows: "The general tendencies in constitutional revision have bearing on the same object; the suppression of legislative primary previously established in the Constitutional texts. We have seen that this general tendency towards the strengthening of the Executive can be realized by two methods: One, a democratic way; the other, openly anti-democratic, dictatorial, with an irresponsible executive."

May I call your attention, finally, to the fact that in advocating this system or this final change, we are not departing from the traditions and customs of our government, of our politics.

It has been well stated that under the present system inaugurated by President Quezon members of the Legislature may be appointed to the Cabinet in order that there would be responsibility for legislation; that, under the Harrison regime, which granted mote autonomy to the Filipino people with greater participation in the Government, cabinet responsibility was recognized; that under the Philippine Commission, which exercised legislative power from 1900 to 1916, the Members of the Commission were likewise Members of the Cabinet, and that, finally, Gentlemen, during the Spanish regime the Governor General had the power to promulgate rules and regulations supplementary to the laws promulgated by the King.

I assert, therefore, Mr. President, that in advocating this system, we are simply following a tradition without any digression whatsoever.

THE PRESIDENT: The time of the Gentleman has expired.

Tiene la palabra el Delegado por Cebú, Señor Briones.

DISCURSO DEL SR. BRIONES

SR. BRIONES: Señor Presidente: Creo que, al fijar nuestra posición en este importante asunto, pode mos sentirnos relevados de hacer una argumentación extensa a favor de la proposición tal como está contenida en el draft, a causa de la confesión hecha por los mismos proponentes de esta enmienda, de que su propósito no es talmente cambiar el sistema de gobierno que estructuramos en este proyecto de Constitución; confesión hecha particularmente por el Delegado por Camarines Norte, Señor Vinzons, de que él es un ardiente partidario del sistema presidencial.

Señor Presidente: Si hay unanimidad de pareceres entre Miembros de esta Convención, de que el sistema mejor y más adaptado a la situación y eondiciones filipinas es el sistema presidencial, no veo la razón por qué hemos de desnaturalizar este sistema con esta enmienda que se propone hoy. Yo creo que en esta estructuración del gobierno del Estado no puede haber soluciones intermedias. Una de dos: o nos decidimos estructurar un sistema parlamentario, o un sistema presidencial. No puede haber una solución intermedia. La solución que no estructure más que un sistema abierto tendería a crear confusión y caos en nuestro gobierno.

Señor Presidente, el objeto de esta disposición de que ningún Miembro de la Legislatura pueda desempeñar otro puesto sin dejar su asiento en ella, sobre todo en el Gobierno, es para cerrar las puertas realmente a que algún Miembro de la Legislatura pueda ser nombrado para el Gabinete; y hemos hecho esto, porque hemos decidido en este proyecto de Constitución estructurar un sistema presidencial de gobierno. Si permitieramos que algunos Miembros de la Legislatura o que el Gabinete mismo fuera compuesto enteramente de Miembros de la Legislatura, no tendríamos mas que aceptar todas las consecuencias del sistema parlamentario, en vez de estructurar un sistema presidencial, con separación de poderes, con el sistema de frenos y contrapesos entre si. La característica del sistema parlamentario o gobierno de Gabinete, es la confianza entre el Poder Legislativo y el Poder Ejecutivo. El Poder Ejecutivo no es mas que una floración del Poder Legislativo; la Legislatura es en realidad la que gobierna por medio del Gabinete, que no es mas que un comite o rama de la Legislatura,

Otra consecuencia del sistema parlamentario, si decidiéramos implantarlo aquí es que el Gabinete tendría que ser responsable solamente a la Asamblea Nacional, como representación del pueblo. No podría dividir su lealtad entre la Asamblea Nacional y el Poder Ejecutivo, porque el Poder Ejecutivo tiene que ser leal consigo mismo, porque el Gabinete no sería, más que una floración y una representación del Poder Legislativo mismo.

Otra consecuencia, si nos decidiéramos a aceptar el sistema parlamentario, es que algunos Miembros de la Legislatura podrían ser nombrados Miembros del Gabinete, y tendríamos necesariamente que revisar este draft, y adoptar aquí el sistema del voto de censura. Como todo el mundo sabe, en Constituciones donde se estructura el sistema parlamentario se ha tenido que proveer el voto de censura. Así vemos aquí, en la Constitución española, que ha adoptado el sistema parlamentario, que los Miembros del Gabinete son susceptibles de ser censurados por la Cámara de Diputados. El voto de censura tiene que ser iniciado por cincuenta Miembros de la Cámara de Diputados, y si el voto de censura es aprobado por una mayoría de dicha Cámara, es obligatoria la formación de un nuevo Gobierno. Así vemos que en la Constitución de Checoslovaquia se provee que el Gabinete esté sometido al voto de censura. El voto de censura tiene que ser iniciado por cien Miembros de la Cámara de Diputados y si se aprueba es obligatoria, es forzosa la dimisión del Gabinete para ser sustituido por otro más aceptable y del agrado de la Cámara de Diputados.

Ahora bien; si aceptamos estas consecuencias, ¿hay aquí, acaso, alguna disposición de que el Gabinete que se forme sea responsable ante la Legislatura y nada mas que la Legislatura? No la hay; ¿por qué? Porque los proponentes mismos de la enmienda han dicho que aceptan el sistema presidencial. ¿Hay alguna disposición de que los Miembros del Gabinete puedan ser censurados y que, por virtud del voto de censura de una mayoría de la Legislatura contra los Miembros del Gabinete, que son Miembros de la Legislatura, dichos Miembros del Gabinete han de dimitir? No existe esa disposición, porque ya he dicho que no puede haber soluciones intermedias en esta cuestión. U optamos por un sistema u optamos por otro.

SR. CONFESOR: Señor Presidente, ¿me permite el orador algunas preguntas?

SR. BRIONES: Sí, Señor.

EL PRESIDENTE: Puede formular sus preguntas el Delegado por Iloilo .

SR. CONFESOR: ¿Acaso hay en las Constituciones que adoptan el sistema parlamentario disposiciones de que en el caso de que la Legislatura aprobara un voto de falta de confianza en el Gabinete, éste deberá dimitir?

SR. BRIONES: Sí, Señor. Puedo leer a Su Señoría inmediatamente la disposición contenida en la Constitución española sobre el particular. La Constitución de España dice lo siguiente:

“El Congreso podrá acordar un voto de censura contra el Gobierno o alguno de sus ministros.

“Todo voto de censura debiera ser propuesto en forma motivada y por escrito con las firmas de cincuenta Diputados en posesion del cargo.

“Esta proposición deberá ser comunicada a todos los Diputados y no podrá ser discutida ni votada hasta pasados cinco días de su presentación.

“No se considerará obligado a dimitir el Gobierno ni el ministro, cuando el voto de censura no fuere aprobado por la mayoría absoluta de los Diputados que constituye la Cámara.”

Lo cual quiere decir que si el voto de censura es aprobado por la mayoría de la Cámara de Diputados, el Gobierno tiene necesariamente que dimitir.

SR. CONFESOR: ¿Cuándo fue aprobada esa Constitución? ¿No es acaso reciente? ¿Y no es acaso verdad que la cuestión del sistema parlamentario es una tradición que España ha copiado?

SR. BRIONES: En la Constitución de Czechoslovaquia existe la misma disposición:

Art. 78. (1) Should the Chamber or Deputies vote lack of confidence in the Government or should it reject the Government's proposal for a vote of confidence, the Government shall resign to the President. The President shall then determine who shall direct the government affairs until a new Government be formed.

(2) Should the Government resign at a time when there is no Presidentor Vice-President, the decision as to the resignation and as to the direction of governmental affairs shall be referred to the committee defined under Article 54.

SR. CONFESOR: Me permite Su Señoría otra pregunta?

SR. BRIONES: Todavía no he contestado completamente al Delegado por Iloílo. Posiblemente el Delegado por Iloílo se refiera a la Constitución inglesa al decir: “tradición que España ha copiado”; pero él sabe que la Constitución inglesa no está escrita, no es más que una tradición. Todo el mundo sabe también que todas estas Constituciones que han adoptado el sistema pariamentario tienen su origen en la tradición inglesa y no hay tradición mas fuerte, no escrita en la Constitución inglesa, que la dimisión del Gabinete. Cuando el Gabinete ha perdido la confianza de la Cámara de los Comunes, aquél dimite y ésta se disuelve para dar al electorado la oportunidad de decidir quién tiene la razón, si el Gobierno saliente o la Cámara de los Comunes.

SR. CONFESOR: ¿Cuál cree Su Señoría que es mejor para nosotros: el sistema parlamentario o el sistema presidencial?

SR. BRIONES: Esta cuestión, creo yo, es pura mente académica en esta Asamblea. Como ha dicho bien el Delegado por Camarines Norte Señor Vinzons, hubiésemos podido discutir ampliamente esta cuestion antes de ahora; pero desde el momento que nos hemos decidido por el sistema presidencial, porque los mismos proponentes de la enmienda dicen ser partidarios del sistema presidencial, para mí es puramente académico cuál es el mejor sistema de gobierno para nosotros, si es el sistema presidencial o el parlamentario. Pero si a mí me preguntan, personalmente, digo que opto por el sistema presidencial porque es el sistema con el que más familiarizados están los filipinos y es el más acomodado a nuestro carácter, a nuestras tradiciones políticas, a nuestras instituciones y a nuestra ideología.

SR. CONFESOR: ¿Por qué se ha puesto en este draft que los Miembros del Gabinete tendran derecho de estar presentes en las sesiones de la Camara y podran tomar parte en los debates?

SR. BRIONES: A eso iba yo ahora. Señor Presidente, se ha dicho que en este proyecto de Constitución hay algunos elementos de gobierno parlamentario, pero son los elementos menos esenciales, porque el derecho que

tiene el Jefe Ejecutivo de ser oído o la obligación que tiene de comparecer, si así lo requiere la Asamblea, no es el elemento esencial del sistema parlamentario; el elemento esencial del sistema parlamentario, como sabe Su Señoría, es la fusión de los dos Poderes: el Legislativo y el Ejecutivo, en el sentido de que el mismo Poder Legislativo administra el Gobierno por medio del Gabinete. No solamente legisla la Cámara de los Comunes sino que además administra o gobierna por medio de sus comites. Y ésta es la esencia del gobierno parlamentario. El elemento parlamentario que hemos admitido aquí es el elemento que podría yo llamar informacional. Hemos incorporado esta cláusula en la Constitución precisamente para establecer una especie de eslabón entre la Asamblea Nacional y el Jefe Ejecutivo en lo que respecta a la información; pero esto no significa que la Asamblea Nacional ha de administrar o ha de ejercer funciones gubernamentales por medio de la administración, que es lo que se haría si permitiéramos que algunos Miembros de la Asamblea Nacional fuesen Miembros del Gabinete.

Espero que estará dispuesto Su Señoría a aceptar la proposición una vez que esté convencido de que esta adopción que hacemos del elemento informacional del sistema parlamentario es una gran mejora que aportamos al establecer el sistema presidencial sin prostituir, sin desnaturalizar la categoría de la separación de poderes, que es la espina dorsal del sistema presidencial, con esta disposición de que podrá ser oído el Poder Ejecutivo en la Asamblea Nacional. Traemos un elemento de información que ha de ser muy beneficioso para la tarea de legislar y para la administración de los asuntos públicos.

SR. CONFESOR: ¿No cree Su Señoría que es peligroso admitir a Miembros del Gabinete en la Asamblea? Porque podrían amenazar a esta diciendo: “Si ustedes aprueban esta medida, vamos a recomendar el veto.”

SR. BRIONES: Eso sería un camouflage, un bluff, como otro cualquiera. Yo no creo que haya una Legislatura que consienta en ser amenazada por un grupo de hombres que tienen asiento delante de ella, pero que no tienen voto ni pueden influir para nada en las decisiones de la Asamblea Nacional.

SR. ARANETA: Para unas preguntas al orador, Señor Presidente.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. BRIONES: Si, Señor.

SR. ARANETA: Parece que he entendido del orador que la esencia del sistema parlamentario es el poder de censura. ¿Cree Su Señoría que con el sistema que se ha adoptado en Filipinas, los Miembros de la Legislatura, lejos de implantar el sistema parlamentario, por el contrario, han fortalecido el sistema presidencial por no haber incluido la censura y porque el Gobernador o el Presidente, teniendo en su Gabinete a Miembros de la Legislatura, cuenta en efecto con delegados suyos dentro de la misma, que sirven para llevar a cabo su política?

SR. BRIONES: Si, Señor; pero en la práctica esta confusión de responsabilidad podrá dar lugar a muchos inconvenientes, y de hecho creo que es así, porque los Miembros del Gabinete que son Miembros de la Asamblea no son responsables ante la Asamblea sino primordialmente ante el Jefe Ejecutivo. Lo que ocurre es que no podemos localizar la responsabilidad en materia de legislación. Ocurre el caso de que si aprobamos un proyecto en la Legislatura, o una de dos, o los Miembros del Gabinete que son Miembros de la Legislatura han concurrido o no han concurrido en la aprobación de ese proyecto. Si han concurrido, no hay ninguna cuestión; quiere decir que ellos se hacen solidarios de la aprobación de ese proyecto y al ser éste sometido al Jefe Ejecutivo para su aprobación o para su veto, recomiendan su aprobación; pero en la práctica, hemos visto que ha ocurrido muchas veces que las luchas por un proyecto no terminan en las Cámaras por la intervención de los Miembros del Gabinete; la lucha se lleva más allá de las fronteras de la Cámara; los Miembros del Gabinete que son Miembros de la Legislatura llevan su oposición no en las Cámaras sino en el Palacio del Jefe Ejecutivo y allí recomiendan el veto del proyecto. Esta es una de las anomalías, uno de los inconvenientes de este sistema, como lo ha calificado

muy bien el Delegado por Ilocos Norte, Señor Ventura .

SR. ARANETA: Me doy cuenta de esa objeción planteada por el orador; pero quiero llevar el asunto al terreno de la información para saber si Su Señoría está a favor de fortalecer el sistema presidencial.

SR. BRIONES: Mi intención no es talmente fortalecer un poder por encima de otro poder. Yo quiero adherirme a la esencia misma del sistema presidencial, que es la teoría de la separación de poderes; que los poderes deben estar separados, pero que ninguno de ellos sea en algo superior a los otros. Deben funcionar armónicamente, coordinadamente, y del conjunto de la coordinación surja la función armónica. Esa es mi idea.

(Prosiguiendo.) Señor Presidente, lo que acontece con este sistema presidencial que, como ya he dicho, no hace más que causar una confusión en el juego de los Poderes, es que, no siendo responsables ante la Legislatura los Miembros del Gabinete que son Miembros de dicha Legislatura, lo más probable que ocurra es el sistema del *double duty*, o sea, que el legislador que es Miembro del Gabinete, a lo mejor sacrifique sus deberes de legislador en aras de sus deberes de ejecutivo, o bien sacrifique sus deberes de ejecutivo en aras de sus deberes de legislador. Es una confusión que hace difícil localizar la responsabilidad; puede dar lugar a una serie de connivencias y contubernios que no suelen redundar en beneficio de la causa pública. Por eso, repito, que lo mejor para nosotros es decidir a qué sistema nos adherimos y decidido esto debemos adherirnos a ese sistema con todas sus esencias, y con todas sus características; no podemos establecer un sistema híbrido.

Señor Presidente, si lo que se quiere es que haya una compenetración entre el poder ejecutivo y el legislativo, ya es bastante lo que tenemos en el *draft*; el derecho del Gabinete de ser oído. Si se quiere más, si se quiere que haya más compenetración entre el Jefe Ejecutivo y la Legislatura—y no hablo por mis compañeros del Subcomité de Siete, no hago más que vocear mi opinión personal—no tendría ningún inconveniente en que se consagre en la Constitución la existencia del Consejo de Estado para informar al Jefe Ejecutivo sobre la política o de la norma de acción de la Legislatura, para que aquél a su vez, por medio de esta ligazón, por medio de este puente, por medio de este eslabón, pueda ser oído en la Legislatura.

Por estas razones, pido que se rechace la enmienda.

SR. PAREDES: Para un turno en pro.

SR. GUZMAN (B.): Señor Presidente, habiéndose consumido ya un turno por ambas partes, si la enmienda es rechazada, quedaría cerrado el paso al gobierno parlamentario; y como no hemos tratado todavía del sistema de gobierno que hemos de adoptar, ¿no será mejor que reservemos la resolución de esta enmienda para cuando discutamos, sobre el Poder Ejecutivo, porque hasta ahora no hemos resuelto si hemos de adoptar el sistema parlamentario o el sistema presidencial ?

EL PRESIDENTE: Este es el lugar adecuado para discutir esto. Estamos tratando del Poder Legislativo.

SR. GUZMAN (B.): Mi moción tiene carácter privilegiado.

EL PRESIDENTE: Ya está discutido el asunto. ¿Cómo vamos a diferirlo si estamos ya en el período de votación ?

SR. GUZMAN (B.): Aun en período de votación, tengo derecho de pedir el aplazamiento.

EL PRESIDENTE: ¿Desea hablar Su Señoría?

SR. GUZMAN (B.): Propongo que se aplase la consideración de esta enmienda para cuando se discuta a fondo el Poder Ejecutivo, porque tiene relación directa con el Poder Ejecutivo la enmienda Lim. Si desaprobamos esta enmienda, virtualmente habremos cerrado el paso a cualquiera otra forma de gobierno.

EL PRESIDENTE: ¿Está dispuesta la Asamblea a votar? (Una mayoría: Sí).

Los que estén conformes con la moción de aplazamiento que digan Sí. (Una minoría de Delegados: Si). Los que no lo estén, que digan No. (Una mayoría de Delegados: No). Hay Una mayoria en contra de la mocion. Queda rechazada.

Tiene la palabra el Delegado por Abra.

DISCURSO DEL SR. PAREDES

MR. PAREDES: Mr. President and Gentlemen of the Convention: I must thank the Gentlemen of the Convention for having granted me the opportunity to speak before them tonight on a question of vital importance. We have been talking about the President and of the ministerial form of government. I have found out that in the Philippine Islands we have never had a President nor a ministerial system in the correct sense of the word. We have had simply a kind of semi-ministerial system in which the members of the Cabinet have never been responsible to the people but have been directly responsible to the Governor General who has not been responsible to the people. We have had a system, approaching the ministerial system of England, in so far as the members of the Cabinet are concerned.

As I remember, the theory of the provision that we have been discussing is that the members of the Cabinet or the members of the ministry shall serve as a moderating power in the event of a conflict between the Upper House and the Lower House. Since we have eliminated the Senate there will no longer be such conflicts to be moderated by the Ministry or by the Cabinet. There will be no more philosophy to this provision forbidding a Member of the Legislative Assembly be appointed as Member of the Cabinet.

MR. CONFESOR: Mr. President, will the Gentleman yield to a question?

THE PRESIDENT: The Gentleman from Abra may yield if he so desires.

MR. PAREDES: Later on, Mr. President.

MR. PAREDES: (Continuing) We all know, Gentlemen of the Convention, that with a member of the Cabinet in the Legislature, as provided in the system we are planning to introduce, we shall have two intellects in the Legislature, that is, the intellect of the people and the intellect of the Chief Executive. It would be of great advantage to our government that Members of the Philippine Legislature could also be Members of the Cabinet. Another reason for advocating the amendment, Gentlemen of the Convention, is that, by adopting this amendment we shall have at least members of the Cabinet who will be directly responsible to the people. Under the system provided for in the draft, we shall have members of the Cabinet who are not responsible to the people directly; they will be responsible to the Chief Executive alone. Under this draft, members of the Cabinet can be called to the National Assembly and interpellated or questioned on a policy of the Administration; but this will not make them responsible to that body.

Supposing that as a result of the debate on the measure being considered, the explanation given by the member of the Cabinet is not considered satisfactory by the Legislative Assembly, what action will be taken by the Secretary of Department? He will not feel obliged to resign as a member of the Cabinet because he can say: "I am not responsible to the people. I was not drawn from the people. I was not drawn from the Senate or from the Lower House. Therefore, I can stay here and not be responsible to anybody."

Of course, he is still responsible to the President. But what kind of responsibility does the President have to the people? We can impeach the President, but we cannot impeach him for acts performed by others.

There are certain grounds for which we can impeach him and, of course negligence is not one of them. If that is

the case, upon whom can the people place the responsibility? Is it on the Ministry or the Cabinet? If we adopt the amendment of the Gentleman, then at least we can tell the people that the Cabinet member has been drawn from the Legislative Body directly voted for by themselves; that if they do not approve of the measure or policy that was adopted with his support, they should no longer elect him into power.

But if we close the door forever to this possibility of Cabinet members being chosen from the Assembly, then we will have destroyed our government because the President who needs the advice of the people, who needs the thought of the people is deprived of that thought of the people, because the members he has in his Cabinet are not the representatives the people. And what will happen? We will have to provide for a council composed of different elements in order to advise the President.

In view of these considerations, Gentlemen of the Convention, I insist that the President should not be deprived of the right to make his selection from the House of Representatives, from the Assembly voted for by the people, elected by the people, the true interpreters of what the people think and feel.

MR. CONFESOR: Mr. President, may I know from the Gentleman what system of government did Roma have when Regulus was a member of the Senate of Rome. Was it Presidential or Ministerial?

MR. PAREDES: There was no such thing as a presidential system in the Senate of Rome. Rome had a biconsular system of government and an imperial system of government.

SR. KAPUNAN: Señor Presidente, para algunas preguntas al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. PAREDES: Sí, Señor.

SR. KAPUNAN: Suponiendo que adoptáramos en nuestro país el sistema parlamentario, ¿no es verdad que con frecuencia ocurrirían las caídas de ministerios ?

SR. PAREDES: Naturalmente.

SR. KAPUNAN: Muy bien: ¿no sabe Su Señoría que si ha progresado el sistema parlamentario en Inglaterra, ha sido por los siglos de tradición en que se apoya el sistema, y porque en Inglaterra existen partidos bien equilibrados, de tal manera que se puede decir que el éxito del parlamentarismo esta en los partidos? Suponiendo que en Filipinas no existiesen partidos, o si existen, sean numerosos — porque aquí solemos cambiar con frecuencia de camisa — los ministerios caerían con frecuencia. Ahora pregunto: ¿Habría dinero suficiente para las elecciones en el caso de que los ministerios disolvieran las Camaras? ¿No es verdad que uno de los privilegios de los ministros o del Gabinete es disolver las Cámaras para llamar a nuevas elecciones ?

SR. PAREDES: Con esa excepción podríamos adoptar el sistema ministerial, porque no vamos a sacar conclusiones generales casos particulares.

SR. KAPUNAN: Pero, supóngase que cada tres meses se formaran partidos de coalición, y de tres en tres meses se tuvieran que celebrar elecciones, ¿habría dinero suficiente para tantas elecciones?

SR. PAREDES: Es que no vamos a tener otras elecciones.

SR. KAPUNAN: No, cuando cae un ministro, siendo solidaria la responsabilidad, tiene que caer el Gabinete ; pero antes de caer, tiene el recurso de disolver la Cámara.

SR. PAREDES: No, Señor; solamente caen los ministros cuando la Cámara no aprueba su actitud.

SR. KAPUNAN: Pero tienen el recurso de disolver la Cámara y llamar a nuevas elecciones.

SR. QUIRINO: Pido la palabra, Señor Presidente.

EL PRESIDENTE: Tiene la palabra el Delegado por Ilocos Sur.

DISCURSO DEL SR. QUIRINO

SR. QUIRINO: Señor Presidente y Caballeros de la Convención: Desgraciadamente no estaba presente en el salón cuando la cuestión de las relaciones entre el Jefe Ejecutivo y los Miembros del Departamento Ejecutivo del Gobierno, que son actualmente Miembros de la Legislatura, se discutía en este recinto. Tengo entendido, sin embargo, que se ha dado la impresión de que algunos Miembros de la Legislatura, que son actualmente Miembros del Gabinete, a pesar de no haber expresado su opinión en contra de algún proyecto pendiente ante la Legislatura o ante cualquiera de las Cámaras, y aun después de haber expresado una opinión favorable sobre dicho proyecto o proyectos de ley, al ejercer sus funciones como Secretarías departamentales, se permitieron emitir opiniones en contra de dichos proyectos recomendando el veto de los mismos. No sé si mi impresión es correcta o no. Si es correcta, pido permiso a la Asamblea para que pueda emitir mi humilde opinión sobre la conducta de los actuales Miembros del Gabinete que son también Miembros de la Legislatura, porque puede interpretarse esta parte de la Constitución que es a bajo nuestra consideración, como una censura contra los actuales Miembros del Gabinete que son Miembros también de la Legislatura. (Varias voces: No.) Afortunadamente, me dicen ahora que no.

Quiero simplemente decir que ningún Miembro del actual Gabinete, que es Miembro al mismo tiempo de la Legislatura, ha claudicado de sus convicciones al emitir su opinión, como tal Miembro del Gabinete, sobre los proyectos pendientes en la Legislatura cuando los mismos se discutieron estando él presente. Lo que habrá habido es que los Miembros del Gabinete, que son también legisladores, por cortesía a los Miembros de la Legislatura, no quisieron expresar abiertamente su opinión en contra de la voluntad o el deseo de la mayoría de ambas Cámaras reservándose el derecho de expresarla claramente para cuando se hubiesen transmitido los proyectos a los Miembros de las Cámaras o cuando llegara el tiempo propicio de emitir dicha opinión en el Gabinete. Pero decir que un Miembro del Gabinete y a la vez de la Legislatura no ha expresado su opinión en los recintos de las Cámaras, eso no es verdad. Hay proyectos de ley que se han aprobado por la Legislatura y han sido objeto de las observaciones, de las opiniones de los Secretarías departamentales como Miembros de la Legislatura. Se han expresado dichas opiniones individual y colectivamente: pero, naturalmente, los Miembros de la Legislatura que son también Miembros del Gabinete, no tuvieron más remedio que acatar pero reservando su derecho de repetir lo que habían dicho en los recintos de las Cámaras, cuando se les requiriese expresar su opinión.

SR. RAFOLS: Señor Presidente, para algunas preguntas al orador.

EL PRESIDENTE: ¿Está dispuesto a contestar el orador?

SR. QUIRINO: Con mucho gusto, Señor Presidente.

SR. RAFOLS: Cuando esos proyectos de ley, que fueron vetados por el Gobernador General, fueron sometidos a la consideración de la Legislatura, ¿formularon su opinión oponiéndose a la aprobación de dichos proyectos algunos senadores que son Miembros del Gabinete al mismo tiempo?

SR. QUIRINO: Yo hablo por mí personalmente, y digo que cuando me oponía a un bill, expresaba mi opinión a los Miembros del Comité y a los Miembros del Senado.

SR. RAFOLS: Le voy a informar a Su Señoría que en cuanto a los bills aprobados por la Cámara y que fueron vetados por el Gobernador General, ninguno de los Miembros de la Cámara que al mismo tiempo son Miembros del Gabinete expresó su opinión en contra de dichos bills y esto se repetirá si vamos a seguir admitiendo que los Miembros de la Legislatura puedan ser al mismo tiempo Miembros del Gabinete.

SR. QUIRINO: Deseo manifestar que ningún Miembro del Gabinete ha recomendado el veto sobre cualquier proyecto. Han expresado su opinión y demostrado los hechos al Gobernador General para que éste determinara si habría de vetar o de aprobar el proyecto; pero ninguno ha recomendado el veto.

SR. RAFOLS: Eso de expresar su opinión ¿no significa acaso recomendar el veto?

SR. QUIRINO: Desde luego, cuando uno expresa su opinion y lo deja a discrecion del Jefe Ejecutivo para que lo decida, esta en el Jefe Ejecutivo el aceptar o no la opinion como buena o erronea.

SR. RAFOLS: ¿Y no es verdad que con la continuacion del sistema actual se hace que un Miembro del Gabinete tenga que emitir opiniones distintas por no poder sostener una opinion contraria al proyecto de ley una vez aprobado por la Legislatura?

SR. QUIRINO: Precisamente, deseo anunciar ahora que estoy conforme con el draft, y la razón por la cual lo favorezco es por la situation embarazosa en que se ve colocado un Miembro del Gabinete que es al mismo tiempo Miembro de la Legislatura, y lo digo por experiencia. Es difícil tener que reconocer a dos amos. (Aplausos.)

SR. ORENSE : For esa manifestación, renuncio a mi derecho de dirigir preguntas al orador, Señor Presidente.

SR. QUIRINO: Y lo digo por experiencia, porque, como legislador y politico, necesariamente tiene uno que respetar la voluntad de la mayoría cuando se está discutiendo un proyecto en las Cámaras, y sería embarazosa la situación en que se vería un Miembro de la Legislatura Que fuese al mismo tiempo Miembro del Gabinete, en el caso de que se aprobara la enmienda que se está considerando, porque colocaría, como he dicho antes, al Miembro del Gabinete en una situación tan embarazosa que no sabría a quien seguir, si al Jefe Ejecutivo o a la Legislatura. (Varias voces: Muy bien, muy bien.)

Como ha dicho muy bien el Caballero de Cápiz, Señor Roxas, el propósito es no solamente democratizar al Jefe Ejecutivo sino también conseguir la haimonizacion del funcionamiento del gobierno que está dirigido por dos poderes: el poder popular representado por la Legislatura y el poder soberano que representa el Jefe Ejecutivo.

SR. CONFESOR: Para una pregunta al orador, Señor Presidente.

EL PRESIDENTE: Puede contestar el orador, si lo desea.

SR. QUIRINO: Con mucho gusto, Señor Presidente

SR. CONFESOR: Su Señoría ha dicho que los Miembros de la Legislatura que al mismo tiempo son Miembros del Gabinete tienen dos amos. En esencia ¿quién es el mejor amo?

SR. QUIRINO: El mejor amo es el pueblo, y cuando un Secretario departamental cree que es perjudicial para el pueblo la aprobación de un proyecto, no importa lo que diga el Jefe Ejecutivo, no importa lo que diga la Legislatura, debe seguir lo que cree en conciencia que debe hacer para sostener lo que quiere el pueblo.

EL PRESIDENTE: Se va a votar la enmienda,

SR. LIM: Quisiera pedir una votación nominal.

EL PRESIDENTE: ¿Que dice la Asamblea? (Varios Delegados: No más; por división solamente.)

Los que estén conformes con la enmienda, se sirvan ponerse de pie. (11 Delegados se levantan.) Los que no lo estén, que se pongan de pie también. (96 Delegados se levantan.)

Por noventa y seis votos negativos contra once votes afirmativos se rechaza la enmienda.

SUSPENSIÓN DE LA SESIÓN

EL PRESIDENTE: Si no hay ninguna objeción, se suspende la sesion por algunos minutos, (No hubo objeccion .)

REANUDACIÓN DE LA SESIÓN

EL PRESIDENTE: Se reanuda la sesion.

Léase la enmienda del Delegado por Bulacán, Senor Villarama.

EL SECRETARIO:

En la página 12, línea 18, después de la palabra “other” insértese lo siguiente: “full time.”

SR. ENRIQUEZ: Señor Presidente, para una pregunta al Delegado por Cebú, Señor Briones.

EL PRESIDENTE: El Delegado puede contestar, si le place.

SR. BRIONES: Si, Señor.

SR. ENRIQUEZ: Mi pregunta tiene relación con la fraseología del párrafo 9, que dice así la primera parte:

“Ningún diputado de la Asamblea Nacional podrá ocupar ningún otro cargo o empleo en el Gobierno sin perder su asiento en la Asamblea.” Mi duda es ésta: Suponiendo que se aprobara o se incorporara en la Constitución el “entendiéndose” y ocurriese que un Diputado que es capitán del Ejército, pero de reserva, fuese llamado a servicio activo, y suponiendo que se le mandara al Japón o a China, y después de un mes volviese a Filipinas, de acuerdo con esta parte del “entendiéndose,” ya no podría volver a su puesto en la Asamblea, porque ha ocupado otro cargo, otro empleo en el Gobierno, pues aquí se habla en términos generales.

SR. BRIONES: ¿Su Señoría se refiere a un Diputado que a la vez es capitán de reserva del Ejército filipino?

SR. ENRIQUEZ: Si, Señor.

SR. BRIONES: Pues eso no cae dentro de este párrafo, Aquí no se hace ninguna distinción; dice: “cualquiera que ocupe un cargo.” De modo que un Diputado no puede aceptar ningún otro cargo. La palabra aceptación implica voluntariedad, implica un nombramiento que puede ser o no aceptado; pero Su Señoría habla de un puesto obligatorio, impuesto.

SR. ENRIQUEZ: Me he equivocado usando la palabra aceptar; pero el draft dice claramente que “ningun Diputado de la Asamblea Nacional podrá ocupar.” Ha sido un lapsus linguae. Voy a corregirlo. Concretándome a la misma fraseología, tal como está, mi duda es si, según esta parte, ese Diputado no podrá ocupar ningún otro cargo o empleo en el gobierno, sin perder su asiento, pues habiendo ocupado el cargo de capitán, siendo diputado, consecuentemente tiene que perder esa plaza.

SR. BRIONES: ¿Quiere decir Su Señoría que él estaba en la reserva al ser elegido Miembro de la Asamblea Nacional u ocupaba ese cargo con emolumento?

SR. ENRIQUEZ: Desde luego.

SR. BRIONES: Si vuelve al servicio active, personalmente creo que él debe, o tiene necesariamente que dejar su puesto en la Asamblea.

SR. ENRIQUEZ; ¿No cree Su Señoría que se debe enmendar esta parte del precepto, porque sería una injusticia para el que va a la guerra por estar obligado. El no quiere dejar el cargo de diputado, pero, como existe el servicio militar obligatorio, tiene que dejar el cargo, y cuando vuelve encuentra au puesto declarado vacante. ¿No cree Su Señoría que el Comité debiera enmendar esta parte del precepto en el sentido de excluir ese caso?

SR. BRIONES: No sé por qué debe ser excluído ese caso; no veo la necesidad de que lo sea.

SR. ENRIQUEZ: Entonces, podría ocurrir que si la mayoría de los que componen la Asamblea Nacional son oficiales de reserva, y se les llamara al servicio, no podría convocarse a la Asamblea porque ya no habria miembros bastantes que la compongan.

SR. BRIONES: Yo creo que las leyes de conscripción exceptúan a los miembros de la Asamblea Nacional. Es ésa la práctica general en todo el mundo. Los miembros de la Asamblea Nacional estan exentos de la conscripción.

SR. ENRIQUEZ: Pero si incorporamos en la Constitución el servicio obligatorio...

SR. BRIONES: Pero si él opta por servir en las filas, naturalmente tiene que estar comprendido bajo esta regla. Quiero decir que si él ha optado por servir a su país en las filas, dejando de ser miembro de la Asamblea Nacional, eso ya sería un caso de voluntariedad; él no está obligado, porque las leyes de conscripción exceptuan a los miembros de la Asamblea Nacional.

SR. ENRIQUEZ: Para otra pregunta. Bajo la segunda parte de este mismo inciso, se dice: “ni durante el tiempo por que fue elegido podrá ser nombrado para cualquier empleo civil bajo la autoridad del Gobierno filipino que haya sido creado.” Suponiedo que de entre esos mismos diputados se nombrara a algunos miembros de una misión, cuya retribución se haya aumentado; me refiero a esos mismos diputados que van, a formar parte de una mision a Francia, por ejemplo, o a América.

SR. BRIONES: No están comprendidos esos cases. Esta fraseología está tomada de la Ley Jones, y la Ley Jones, con esta clausula, no ha impedido que los miembros de la Legislatura hayan sido miembros de esas misiones.

SR. RAFOLS: Para algunas preguntas al Caballero de Cebú.

EL PRESIDENTE: El Delegado por Cebti puede contestar, si le place.

SR. BRIONES: Si, Señor.

SR. RAFOLS: Un capitán, como decía el Caballero, pero no de la reserva, sino en servicio activo, se presents candidate a diputado y sale elegido. Ese capitán, ¿podrá desempeñar el cargo?

SR. BRIONES: Él no puede ser elegido si no deja gu puesto.

SR. RAFOLS: Pero no hay ninguna prohibición.

SR. BRIONES: Las leyes ordinarias prohíben a los empleados civiles presentarse candidatos, a menos que dejen sus cargos, y si se prohíbe a los empleados civiles, ¿cómo no ha de comprender esta regla a los militares? Con mayor razón.

SR. RAFOLS: Entonces ese capitán ¿no puede ser elegido Presidente de la República?

SR. BRIONES: Tiene que dejar su puesto antes de presentarse candidate a un cargo.

SR. RAFOLS: Pero no hay nada en la Constitución que prohíba que sea nombrado después de elegido.

SR. BRIONES: La Legislatura puede legislar sobre eso, y de hecho hay leyes sobre ese particular.

EL PRESIDENTE: Léase la siguiente enmienda.

EL SECRETARIO:

En la página 12, línea 18, después de la palabra “employment” insertese lo siguiente: “which carries with it a salary or compensation.”

SR. VENTURA : Quisiera pedir algunos informes del Caballero de Cebú.

SR. ROXAS: Contestaré a Su Señoría mientras esté ausente el Caballero de Cebú.

SR. VENTURA: Refiriéndome a esta parte: “Algún otro cargo o empleo”. Mi enmienda se lee como sigue; “which carries with it, compensation.” I have mind in presenting this amendment, Mr. President the positions in the Board of Regents of the University of the Philippines, the positions in the Philippine National Bank.

MR. ROXAS: I can answer that question now by saying...

MR. VENTURA: And also the Council of State, if in the future we will establish that institution under the Commonwealth, or the Judicial Council which is provided for in the Judicial Department. If a member of the National Assembly is appointed to the position in the Judicial Council, will he have to resign, then, his position as Member of the National Assembly?

MR. ROXAS: I do not think so.

MR. VENTURA: But he is appointed as a member of the Council of State because he is the speaker of the National Assembly. He has to be a member of the Council of State.

MR. ROXAS: I do not think so, because, as the courts have interpreted it, the term “office” or “employment,” necessarily implies the element of compensation attached to it. In the definition of the word “office,” the courts have always held that one of the elements is compensation. The position must be given certain jurisdiction, there must be a certain term, and there must be compensation attached to it; otherwise it is not an office or an employment.

MR. VENTURA: What would you all the position held by a member of the Board of Regents?

MR. ROXAS: Membership in the board. As a member of the Board of Regents, one does not receive compensation.

MR. VENTURA: It is called “office”.

MR. ROXAS: Legally, it is not exactly an office because it does not carry compensation. And then, Mr. President, these positions in the Board of Regents of the University or in the National Bank are not included in this precept because this precept includes only offices or employment in the government. The University of the Philippines is an independent corporation. So is the National Bank. There is no appointment by the Government; the appointment is by the President or by the Board of Directors of the bank.

MR. VENTURA: Referring to the Council of State that may be established...

MR. ROXAS: Well, that is advisory; that is not an office because it does not carry compensation unless it be made a permanent body with jurisdiction and compensation. But if it is the Council of State with advisory function, then it is not an office in the legal sense of the term.

MR. VENTURA: Supposing he receives per diem?

MR. ROXAS: If the body is advisory, it is not an office.

MR. VENTURA: I mean the other offices or certain boards.

MR. ROXAS: For example?

MR. VENTURA: For example a Tariff Commission.

MR. ROXAS: If he is a member of the Tariff Commission (suppose we create a Tariff Commission) and he has been appointed to that office, resigning as a member of the Legislature, he is entitled to compensation.

MR. VENTURA: If that is the case, I withdraw the amendment.

EL PRESIDENTE: Léase la enmienda del Delegado por Tayabas, Señor Millar.

EL SECRETARIO:

Del Delegado Millar: Página 12-A. Línea 20, suprimanse las palabras: “sin perder su asiento en la Asaniblea ni,” y en la línea 21, suprimase lo que aparece después de la palabra “elegido” hasta el final del inciso.

SR. MILLAR: Señor Presidente, en vista de que está casi resuelta esa enmienda, pido permiso para retirarla.

EL PRESIDENTE: Si no hay objecion, se, da por retirada. Léase la enmienda del Delegado por Nueva Vizcaya, Señor Cabarroguis.

EL SECRETARIO:

By Delegate Cabarroguis: Page 13, line 3, change “(10)” to “(a) interest in public contract prohibited,” and the word “Assembly” to “Congress,” on line 8, change “Assembly” to “Congress,” on line 9 and 10, strike out the word “inferior”.

EL PRESIDENTE: Al Comité de Estilo.

Léase la enmienda del Delegado por Cagayán, Señor Pío.

EL SECRETARIO:

By Delegate Pío: Page 13, line 4, strike out the words “or indirectly.”

MR. PIO: Mr. President, may I ask some questions from the Chair? For example, a Member of the Legislature forms a partnership with an engineer, and the partnership or corporation enters into a contract with the Government, would he be indirectly entering into a contract with the government?

SR. BRIONES: Si, Señor.

MR. PIO: Then in that case, this is fundamental.

SR. BRIONES: Además, ni siquiera es indirecto eso. Esa es Una participación directa. Él pertenece a esa sociedad y deriva ganancias de la misma.

MR. PIO: Then that would be prohibiting the Members of the National Assembly from being stockholders of a corporation?

SR. BRIONES: Sí.

MR. PIO: And supposing a person is a stockholder in a corporation, would he have to sell his stock before he can be a member of the Legislature?

SR.BRIONES: Naturalmente, él, por razones de propiedad, no tiene más remedio que hacerlo. Si esa entidad va a celebrar contratos con el Gobierno, como cuestión de moral publica, el no tiene más remedio que aserlo.

MR. PIO: Mr. President, I would like to explain my amendment.

THE PRESIDENT: The Gentleman has the floor.

DISCURSO DEL SR. PIO

MR. PIO: Mr. President and Gentlemen of the Convention: My amendment is very simple. It consists only in striking out the phrase "or indirectly" from subsection 10 of section 3 of the draft.

Mr. President, the first part of the said subsection prohibits Members of the National Assembly during their terms of office from being directly or indirectly financially interested in any contract with the government or any subdivision or instrumentality thereof, or in any franchise or special privilege granted by the National Assembly. Evidently, the purpose of the precept is to correct the present practice of some Members of the Legislature who are directly financially intrested in some contracts with the Government. The said practice has been denounced time and again by the press and the public, and naturally any provision that tends to remedy the situation would be a welcome innovation.

But, Mr. President, such precept goes beyond remedying the present situation. It does not only correct the practice of some legislators in being directly financially interested in some contracts with the Government but it also prohibits all Members of the National Assembly from being financially interested in business organizations which may be financially interested in any contract with the government, or in any franchise or special privilege granted by the National Assembly.

Mr. President, I believe that there are only very few men, if there are any at all, who make politics their profession or means of earning a livelihood. I sincerely believe that most of our legislators have professions giving them income even before becoming legislators and also during their term of office. Indeed, we can point with pride to the fact that our legislators are lawyers, physicians, engineers, businessmen, and property owners. Accordingly, most of our present legislators must have been financially interested in some corporations, partnership and other business organization before becoming legislators and also during their incumbency.

Mr. President, what is true with our present legislators will, I presume, be also true with the future Mem-bers of the National Assembly. They will also be lawyers, physicians, engineers, businessmen, and property owners. They will likewise have business connections and will be interested in some corporations, partnerships and other business organizations before they become Members of the National Assembly.

Mr. President, all the stockholders of a corporation and the partners of a partnership, although they are not officials of the same, are indirectly, at least, financially interested in all business ventures of the said corporation or partnership. Accordingly, when some stockholders of a corporation or the partners of a partnership are Members of the National Assembly, and said corporation or partnership happens to be interested financially in a certain contract with the government or a certain franchise or special privilege granted by the National Assembly, such Members are indirectly interested financially in the said contract, franchise or privilege.

According to the precept under discussion, such a financial interest, although an indirect one is prohibited And, therefore, when Members of the National Assembly find themselves under such circumstances, they must either sell out their stock or their holdings bringing about their own financial ruin. On the other hand, their open violation of the Constitution may also bring about their ouster from office. The inevitable outcome would, therefore, be the keeping out of the National Assembly of good businessmen who as Assemblymen could help in the solution of our economic problems, and also the barring of Members of the National Assembly from helping

in the organization and financing of corporations, partnerships and other business entities or corporations which help in the economic development of our country.

Mr. President, I sincerely believe that it is not the intention of this Convention to place the Members of the National Assembly under such an embarrassing position. I also sincerely believe that it is not the intention of the Convention to keep out of the National Assembly good businessmen, who as Assemblymen could help much in the solution of our economic problems nor to prohibit the Members of the National Assembly from helping in the organization and financing of corporations, partnerships and other business entities. Yet, Mr. President, that is exactly what will happen under the precept in question, unless we strike out the phrase “or indirectly” because while corporations and partnerships have personalities which are different and distinct from those of the stockholders or partners, such stockholders or partners are nevertheless indirectly interested financially in the transactions of their corporations or partnerships, and therefore, come under the provision of the said precept.

Furthermore, Mr. President, while the latter part of said subsection 10 of sec 3 of the draft prohibits Members of the National Assembly from appearing as counsel before any court inferior to the Court of Appeals or in any case wherein the government is an adverse party, the same does not prohibit said Members from appearing indirectly before the said courts. Members of the National Assembly accordingly appear indirectly thru their partners before the courts inferior to the Courts of Appeals or in any civil case in which the Government is an adverse party. If Members of the National Assembly could thus indirectly appear before courts and in cases in which they are prohibited to appear, Members of the National Assembly who belong to other professions, should, for the sake of equity and justice, be given the same privilege of becoming members of corporations or partnerships which may be directly financially interested in contracts with the Government or in any franchise or privilege that may be granted by the National Assembly.

Mr. President, as I have stated at the start, the purpose of this precept is to correct the present practice of some legislators who are financially interested in some contracts with the Government. I sincerely believe that the prohibition of direct financial interest is enough to correct such practice. The prohibition against an indirect financial interest not only would be an inadequate remedy but would, as I have said, bring about some anomalies. It would be like a medicine which, while it cures the sickness of a patient, brings about certain other complication.

EL PRESIDENTE: Se va a votar la enmienda. Los que esten conformes con la misma que digan: Sí. (Una minoría: Sí) Los que no lo esten, que digan: No. (Una mayoría: No.) Queda rechazada la enmienda.

Léase la enmienda Cloribel.

EL SECRETARIO:

“On page 13, line 8, strike out the words “The National Assembly” and insert in lieu thereof the word “law”.

EL PRESIDENTE: La Mesa cree que esta enmienda debe referirse al Comité de Estilo.

Léase la enmienda Vinzons.

EL SECRETARIO:

“On page 13, line 8, after the word “Assembly” insert the words “during such term of office.”

MR. VINZONS: I move that this amendment be referred to the Committee on Style.

EL PRESIDENTE: Como se pide.

Léase la enmienda Gullas, Francisco y otros.

EL SECRETARIO:

En la página 13, líneas 9 y 10, suprimanse las palabras: “as counsel before any court inferior to the Court of Appeals, or.”

EL PRESIDENTE: ¿Qué dice el Comité?

SR. BRIONES: Preferimos dejar a la discreción de la Asamblea esta enmienda.

DISCURSO DEL SR. GULLAS

MR. GULLAS: Mr. President and Gentlemen of the Convention: There are various amendments to strike out the three prohibitions against lawyers' appearing in certain cases. These prohibitions appear on lines 8 to 14, page 13 of the draft. Said lines read as follows: "... Nor shall any such Member appear as counsel before in any court inferior to the Court of Appeals, or before any other court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or collect any fee for his appearance in any administrative proceedings". Now, there are various amendments presented by the following Gentlemen: Sanchez, Sevilla, Cruz, Kintanar, Carin, Cuenco, Gullas and later on by Guzman, A. Mr. President, we have come to an agreement to present a joint amendment accepting the very wording expressed in my amendment and which is also expressed by Cuenco amendment, which reads as follows: “strike out the following words “before any court inferior to the Court of Appeals, or” and on line 10, strike out the word “other.” In other words, just strike out the words, “prohibiting the lawyers from appearing in cases in the Court of First Instance and the Justice of the Peace Courts”. I understand that this amendment is accepted by the Committee.

APROBACIÓN DE LA ENMIENDA GULLAS Y OTROS

EL PRESIDENTE: Se va a votar la enmienda. Los que estén conformes con la misma, que digan: Sí. (Varios Delegados: Sí). Los que no lo estén, que digan: No. (Varios Delegados: No). División.

Los que estén conformes con la enmienda, tengan la bondad de ponerse de pie. (67 Delegados se levantan.) Los que no lo estén, tengan la bondad de hacer lo propio. (36 Delegados se levantan.)

Por 67 votos afirmativos contra 36 negativos, se aprueba la enmienda.

MOCIÓN DE RECONSIDERACIÓN

SR. ORENSE : Señor Presidente, presento la moción de que se reconsidere la enmienda que acaba de aprobar se.

EL PRESIDENTE: Los que estén conformes con que se reconsidere que digan Sí. (Una minoría: Sí.) Los que no lo estén, que digan No. (Una mayoría: No.) Queda rechazada la enmienda.

MR. GULLAS: Mr. President, I understand that various delegates, authors of the amendment, have asked permission of the Chair to speak.

EL SECRETARIO:

Del Señor Mumar:

En la pagina 13, línea 8, sustitúyanse las palabras: “nor shall any such member” por las siguientes: “No Member of the Permanent Commission shall.”

MR. MUMAR: Mr. President, I request that my amendment be considered after the consideration of the question as to whether or not we shall have the Permanent Commission.

THE PRESIDENT: In view of this amendment approved by the Assembly, that amendment should be withdrawn..

MR. MUMAR: I withdraw

MR. DIKIT: I have a amendment which consists in adding after the word “party” in line 12, page 13, the phrase “or in any criminal case wherein in an officer or employee of the Government is the accused.

Mr. President and Gentlemen of the Convention: My amendment is very short. After the word “party” on line 12, I propose to add the following phrase, “or in any criminal case wherein an officer or employee of the Government is the accused.” My reason for this, Gentlemen, is that it is improper or unethical for the members national assembly to appear in court in a criminal case wherein an officer of government is accused of malversation of public funds. I have actually experienced a situation wherein a have accused some government officers of malversation of public funds, with Senators and other lawyers defending them. There was a instance wherein, I believe, the accused was required to resign in view of the fact that he was a very influential Government official; and, through the influence of the Senators, who defended him, he was excluded from the criminal prosecution. So, Gentlemen, I believe that we should not allow a situation such as this to occur again. I believe that it is very embarrassing for the employee performing his duty to see that instead of cooperating in the prosecution of those who have malversed public funds, some officers of the Government are the ones defending them, appearing as counsel for the defense.

MR. ESCAREAL: I suppose the Getleman is speaking of cases of malversation. How about cases like treason or other statutory crimes? Does the constitutional prohibition apply to them also?

MR.DIKIT: I believe so, because is seems to me that it is the duty of all officers of the Government to eliminate all undesirable officials from the Government service. I submit this to the decision of the Convention.

EL PRESIDENTE: ¿Puede votarse la enmienda? (Varios Delegados: Sí).

Los que estén conformes con la enmienda, que digan: Sí. (Varios Delegados: Sí.) Los que no lo estén, que digan No. (Varios Delegados: No). División.

Los que estén conformes con la enmienda, tengan la bondad de levantarse. (57 Delegados se levantan.) Los que no lo estén, que tengan la bondad de levantarse también. (33 Delegados se levantan.)

Por cincuenta y siete votos afirmativos contra treinta y tres negativas, se aprueba la enmienda.

Léase otra enmienda.

EL SECRETARIO:

By Delegate Maramara and Cloribel.

Page 13, lines 13 and 14, strike out all appearing on said lines.

MR. CLORIBEL: Mr. President.

MR. MARAMARA: Mr. President, with the recent passage of the amendment of Mr. Gullas and others, what becomes of our amendment? Is it approved or disapproved?

THE PRESIDENT: In connection with administrative cases only.

MR. CLORIBEL: May I explain our amendments? Mr. President and Gentlemen of the Convention: The aim of this precept is to avoid suspicion of partiality in the decisions in administrative proceedings where politicians are intervening for the defense. Unless the Members of the National Assembly are excluded from appearing there will

always be that suspicion. The best remedy is to prohibit completely the Members of the National Assembly from appearing in court in any administrative proceedings. It is not enough that we provide that they should not receive any fee for their appearance. The contract for services is personal in nature. Whether it is oral, or written, the payment of compensation may never be discovered. Nobody has the right to ask when a Member of the Assembly has collected his fees for appearing in any administrative proceedings. I, therefore, request the Assembly to do away with this provision.

EL PRESIDENTE: ¿Que dice el Comité?

SR. BRIONES: El Comité siente no poder aceptar la enmienda y pide que se vote.

EL PRESIDENTE: Los que estén conformes con la enmienda, que digan: Sí (Varies Delegados: Sí). Los que no lo estén, que digan: No (Varios Delegados: No). Queda rechazada la enmienda. Léase otra enmienda.

EL SECRETARIO:

Léase la enmienda Buslón y otros.

On page 13, between lines 14 and 15, insert the following: “and shall any Member appear as counsel before the Electoral Commission provided for in this Constitu-tion.”

EL PRESIDENTE: ¿Qué dice el Comité?

SR. BRIONES: El Comité acepta la enmienda y pide que se vote.

EL PRESIDENTE: Los que estén conformes con la enmienda, que digan Sí. (Varios Delegados: Sí). Los que no lo estén, que digan: no (Varios Delegados: No). Queda aprobada la enmienda.

EL SECRETARIO: Léase la enmienda Buslón y otros.

On page 13, between lines 14 and 15, insert the following:

“(11) upon the petition of one third of the total number of the registered voters of a given district, the National Assembly shall submit to the electorate of such district the question of recalling the Member of the National Assembly from that district. If the majority of the votes are for the recall of said Member, the office of such Member becomes vacant and a new election to fill such vacancy shall be held in accordance with law. Members of the National Assembly may be recalled only for incompetence, grave immorality, culpable violation of the Constitution, treason, bribery, and other crimes.”

MR. BUSLON: I move that this amendment be voted without debate.

EL PRESIDENTE: El autor pide que se vote.

Los que estén conformes con la mocion, que digan: Sí. (Varies Delegados: Sí). Los que no lo estén, que digan No. (Una mayoria: No.). Queda rechazada.

LEVANTAMIENTO DE LA SESIÓN

EL PRESIDENTE: Señores Delegados: Voy a proponerles que levantemos la sesión para que nos reunamos en una conferencia conjunta; con el objeto de que podamos tratar de la manera como podríamos despachar mas expeditamente los trabajos de la Convención, aqui mismo. Si no hay ninguna objeción, asi se acuerda. (No da. (No hubo objeción.)

Se levanta la sesion hasta manana.

Eran las 7:50. p.m.

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