

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF, VS. MILTON E. SPRINGER, DALMACIO COSTAS, AND ANSELMO HILARIO, DEFENDANTS.

G.R. No. 26979. April 01, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an original action of quo warranto brought in the name of the Government of the Philippine Islands, against three directors of the National Coal Company who were elected to their positions by the legislative members of the committee created by Acts Nos. 2705 and 2822. The purpose of the proceeding is to test the validity of the part of section 4 of Act No. 2705, as amended by section 2 of Act No. 2822, which provides that "The voting power of all such stock (in the National Coal Company) owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The material facts are averred in the complaint of the plaintiff and admitted in the demurrer of the defendants. The National Coal Company is a corporation organized and existing by virtue of Act No. 2705 of the Philippine Legislature as amended by Act No. 2822, and of the Corporation Law. By the terms of the charter of the corporation, the Governor-General was directed to subscribe on behalf of the Government of the Philippine Islands for at least fifty-one per cent of the capital of the corporation. The Government eventually became the owner of more than ninety-nine per cent of the thirty thousand outstanding shares of stock of the National Coal Company. Only nineteen shares stand in the names of private individuals.

On November 9, 1926, the Governor-General promulgated Executive Order No. 37. Reference was made therein to opinions of the Judge Advocate General of the United States Army and of the Acting Attorney-General of the United States wherein it was held that the provisions of the statutes passed by the Philippine Legislature creating a voting committee or board of control, and enumerating the duties and powers thereof with respect to certain corporations in which the Philippine Government is the owner of stock, are nullities. Announcement was made that on account of the invalidity of the portions of the Acts creating the voting committee or board of control, the Governor-General would, thereafter, exercise exclusively the duties and powers theretofore assumed by the voting committee or board of control. Notice of the contents of this executive order was given to the President of the Senate and the Speaker of the House of Representatives. (24 Off. Gaz., 2419.)

A special meeting of the stockholders of the National Coal Company was called for December 6, 1926, at 3 o'clock in the afternoon, for the purpose of electing directors and the transaction of such other business as might properly come before the meeting. Prior thereto, on November 29, 1926, the President of the Senate and the Speaker of the House of Representatives as members of the voting committee, requested the Governor-General to convene the committee at 2.30 p. m., on December 6, 1926, to decide upon the manner in which the stock held by the Government in the National Coal Company should be voted. The Governor-General acknowledged receipt of

this communication but declined to participate in the proposed meeting. The President of the Senate and the Speaker of the House of Representatives did in fact meet at the time and place specified in their letter to the Governor-General. It was then and there resolved by them that at the special meeting of the stockholders, the votes represented by the stock of the Government in the National Coal Company, should be cast in favor of five specified persons for directors of the company.

On December 6, 1926, at 3 o'clock in the afternoon, the special meeting of the stockholders of the National Coal Company was held in accordance with the call. The Governor-General, through his representative, asserted the sole power to vote the stock of the Government. The President of the Senate and the Speaker of the House of Representatives attended the meeting and filed with the secretary of the company a certified copy of the minutes of the meeting of the committee held at the office of the company a half hour before. The Governor-General, through his representative, thereupon objected to the asserted powers of the President of the Senate and the Speaker of the House of Representatives, and the latter likewise objected to the assertion of the Governor-General.

The chair recognized the President of the Senate and the Speaker of the House of Representatives in their capacity as majority members of the voting committee as the persons lawfully entitled to represent and vote the Government stock. To this the representative of the Governor-General made protest and demanded that it be entered of record in the minutes. The vote cast by the President of the Senate and the Speaker of the House of Representatives was in favor of Alberto Barretto, Milton E. Springer, Dalmacio Costas, Anselmo Hilario, and Frank B. Ingersoll. The Governor-General, through his representative, alleging representation of the Government stock, cast his vote in favor of Alberto Barretto, Romarico Agcaoili, Frank B. Ingersoll, H. L. Heath, and Salvador Lagdameo. The chair declared the ballot cast by the President of the Senate and the Speaker of the House as electing the names therein indicated, directors of the National Coal Company.

Immediately after the stockholders' meeting, the persons declared by the chairman to have been elected, met and undertook to organize the board of directors of the National Coal Company by the election of officers. All the directors for whom the President of the Senate and the Speaker of the House of Representatives voted and who were declared elected at the meeting of the stockholders participated in this meeting. Included among them, were the three defendants, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario.

The applicable legal doctrines are found in the Organic Law, particularly in the Organic Act, the Act of Congress of August 29, 1916, and in statutes enacted under authority of that Act, and in decisions interpretative of it.

The Government of the Philippine Islands is an agency of the Congress of the United States. The powers which the Congress, the principal, has seen fit to entrust to the Philippine Government, the agent, are distributed among three coordinate departments, the executive, the legislative, and the judicial. It is true that the Organic Act contains no general distributing clause. But the principle is clearly deducible from the grant of powers. It is expressly incorporated in our Administrative Code. It has time and again been approvingly enforced by this court.

No department of the Government of the Philippine Islands may legally exercise any of the powers conferred by the Organic Law upon any of the others. Again it is true that the Organic Law contains no such explicit prohibition. But it is fairly implied by the division of the Government into three departments. The effect is the same whether the prohibition is expressed or not. It has repeatedly been announced by this court that each of the branches of the Government is in the main independent of the others. The doctrine is too firmly imbedded in Philippine institutions to be debatable. (*Administrative Code*, sec. 17; *Barcelon vs. Baker and Thompson* [1905], 5 Phil., 87; *U. S. vs. Bull* [1910], 15 Phil., 7; *Severino vs. Governor-General and Provincial Board of Occidental Negros* [1910], 16 Phil., 366; *Forbes vs. Chuoco Tiaco and Crossfield* [1910], 16 Phil., 534; *Province of Tarlac vs.*

Gale [1913], 26 Phil., 338; Concepcion vs. Paredes [1921], 42 Phil., 599; U. S. vs. Ang Tang Ho [1922], 43 Phil., 1; Abueva vs. Wood [1924], 45 Phil., 612; Alejandrino vs. Quezon [1924], 46 Phil., 83.)

It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law. The Governor-General must find his powers and duties in the fundamental law. An Act of the Philippine Legislature must comply with the grant from Congress. The jurisdiction of this court and other courts is derived from the constitutional provisions.

These canons of political science have more than ordinary significance in the Philippines. To the Government of the Philippine Islands has been delegated a large degree of autonomy, and the chief exponent of that autonomy, in domestic affairs is the Philippine Legislature. The Governor-General on the other hand is the head of the Government and symbolizes American sovereignty. That under such a political system, lines of demarcation between the legislative and the executive departments are difficult to fix, and that attempted encroachments of one on the other may occur, should not dissuade the Supreme Court, as the guardian of the constitution, from enforcing fundamental principles.

The Organic Act vests "the supreme executive power" in the Governor-General of the Philippine Islands. In addition to specified functions, he is given "general supervision and control of all the departments and bureaus of the government of the Philippine Islands as far as is not inconsistent with the provisions of this Act." He is also made "responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands." The authority of the Governor-General is made secure by the important proviso "that all executive functions of Government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General." (Organic Act, sees. 21, 22.) By the Administrative Code, "the Governor-General, as Chief Executive of the Islands, is charged with the executive control of the Philippine Government, to be exercised in person or through the Secretaries of Departments, or other proper agency, according to law." (Sec. 58.)

The Organic Act grants general legislative power except as otherwise provided therein to the Philippine Legislature.

(Organic Act, sees. 8, 12.) Even before the approval of the existing Organic Act, it was held that the Philippine Legislature has practically the same powers in the Philippine Islands within the sphere in which it may operate as the Congress of the United States. (Chanco vs. Imperial [1916], 34 Phil., 329.) The rule judicially stated is now that an Act of the Philippine Legislature which has not been expressly disapproved by Congress is valid, unless the subject matter has been covered by Congressional legislation, or its enactment forbidden by some provision of the Organic Law. The legislative power of the Philippine Government is granted in general terms subject to specific limitations. (Gaspar vs. Molina [1905], 5 Phil., 197; U. S. vs. Bull, supra; In re Guariña [1913], 24 Phil., 37; U. S. vs. Limsiongco [1920], 41 Phil., 94; Concepcion vs. Paredes, supra.)

An independent judiciary completes the governmental system. The judicial power is conferred on the Supreme Court, Courts of First Instance, and inferior courts. (Organic Act, sec. 26.)

It is axiomatic that the Philippine Legislature was provided to make the law, the office of the Governor-General to execute the law, and the judiciary to construe the law.

What is a legislative, an executive, or a judicial act, as distinguished one from the other, is not always easy to ascertain. A precise classification is difficult. Negatively speaking, it has been well said that "The legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the

judiciary has no power to make or execute the law." (U.S. vs. Ang Tang Ho, *supra*.)

It is legislative power which has been vested in the Philippine Legislature. What is legislative power? Judge Cooley says he understands it "to be the authority, under the constitution, to make laws, and to alter and repeal them." Those matters which the constitution specifically confides to the executive "the legislature cannot directly or indirectly take from his control." (Cooley's Constitutional Limitations, 7th ed., pp. 126-131, 157-162.) President Wilson in his authoritative work, "The State," page 487, emphasizes by italics that legislatures "are law making bodies acting within the gifts of charters, and are by these charters in most cases very strictly circumscribed in their action." If this is true, the converse that legislative power is not executive or judicial or governmental power needs no demonstration. The Legislature cannot lawfully exercise powers which are in their nature essentially executive or judicial. The Legislature cannot make a law and then take part in its execution or construction. So the Philippine Legislature is not a partaker in either executive or judicial power, except as the Philippine Senate participates in the executive power¹ through having the right to confirm or reject nominations made by the Governor-General, and except as the Legislature participates in the judicial power through being made the sole judge of the elections, returns, and qualifications of its elective members and through having the right to try its own members for disorderly behavior. The Philippine Legislature may nevertheless exercise such auxiliary powers as are necessary and appropriate to its independence and to make its express powers effective. (McGrain vs. Daugherty [1927], 273 U. S., 135; 71 Law. ed., 580.)

When one enters on a study of the abstract question, Where does the power to appoint to public office reside?, one is nearly buried in a mass of conflicting authority. Yet we have been at pains to review all of the cases cited by counsel and others which have not been cited. Shaking ourselves loose from the encumbering details of the decisions, we discern through them a few elemental truths which distinguish certain cases from others and which point the way for us in the Philippines.

The first principle which is noticed is that the particular wording of the constitution involved, and its correct interpretation predetermines the result. Does the constitution deny the legislative body the right of exercising the appointing power.. The legislature may not do so. (State vs. Kennon [1857], 7 O. St., 547; Clark vs. Stanley [1872], 66 N. C., 28.) Does the constitution confer upon the governor the power to appoint certain officers and upon the legislature the power to prescribe the manner of appointment. The authorities are in conflict as to whether the legislature may itself make the appointment. Does the constitution merely contain the usual clause distributing the powers of government and no clause regulating appointments. The weight of judicial opinion seems to be that the power of appointing to office is not exclusively an executive function and that the legislature may not only create offices but may also fill them itself, but with a vigorous opposition in most respectable quarters. (Contrast Pratt vs. Breckinridge [1901], 112 Ky., 1, and State vs. Washburn [1901], 167 Mo., 680, with People vs. Freeman [1889], 80 Cal., 233, and Richardson vs. Young [1909], 122 Tenn., 471.)

The second thought running through the decisions is that in the state governments, the selection of persons to perform the functions of government is primarily a prerogative of the people. The general power to appoint officers is not inherent in any branch of the government. The people may exercise their political rights directly or by delegation. Should the people grant the exclusive right of appointment to the governor, he possesses that right; but if they should otherwise dispose of it, it must be performed as the sovereign has indicated. Inasmuch, however, as the legislative body is the repository of plenary power, except as otherwise restricted, and the chief executive of the State is not, legislative bodies usually possess wide latitude in the premises. But this situation does not obtain in the Philippines where the people are not sovereign, and where constitutional rights do not flow from them but are granted by delegation from Congress.

It may finally be inferred from the books that the appointment of public officials is generally looked upon as

properly an executive function. The power of appointment can hardly be considered a legislative power. Appointments may be made by the Legislature or the courts, but when so made should be taken as an incident to the discharge of functions properly within their respective spheres. (State vs. Brill [1907], 100 Minn., 499; Stockman vs. Leddy [1912], 55 Colo., 24; Spartanburg County vs. Miller [1924], 132 S. E., 673; Mechem on Public Officers, sees. 103-108; Mechem, The Power to Appoint to Office; Its Location and Limits, 1 Mich. Law Rev. [1903], 531.)

From the viewpoint of one outside looking in, it would seem that the State legislatures have all too often been permitted to emasculate the powers properly belonging to the executive department, and that the governor of the State has been placed with the responsibility of administering the government without the means of doing so. The operations of the executive department have been fundamentally varied by the legislative department. The legislature has absorbed strength, the executive has lost it. This tendency has rather been tolerated than acquiesced in. The executive should be clothed with sufficient power to administer efficiently the affairs of state. He should have complete control of the instrumentalities through whom his responsibility is discharged. It is still true, as said by Hamilton, that "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government." The mistakes of State governments need not be repeated here.

The history of the power of appointment and the stand taken by the judiciary on the question in the State of Kentucky is of more than ordinary interest. Kentucky was permitted to become an independent State by Virginia. The clause in the Kentucky constitution separating and guarding the powers of government came from the pen of the author of the Declaration of Independence, Thomas Jefferson. He it was who, in a letter to Samuel Kercheval, dated July 16, 1816, said: "Nomination to office is an executive function. To give it to the legislature, as we do in Virginia, is a violation of the principle of the separation of powers. It swerves the members from correctness by temptation to intrigue for office for themselves, and to a corrupt barter for votes, and destroys responsibility by dividing it among a multitude." Possibly inspired to such action by the authorship of the portion of the State constitution which was under consideration, in the early days of the Supreme Court of Kentucky, Mr. Chief Justice Robertson in the case of Taylor vs. Commonwealth ([1830], 3 J. J. Marshall, 401) announced that "Appointments to office are intrinsically executive," but that it might be performed by a judicial officer when the duties of the office pertain strictly to the court. This opinion was shaken in the case of Sinking Fund Commissioners vs. George ([1898], 104 Ky., 260) only to be afterwards reaffirmed in Pratt vs. Breckinridge ([1901], 112 Ky., 1), and in Sibert vs. Garrett ([1922], 246 S. W., 455). In the decision in the latter case, one of the most recent on the subject, the Supreme Court of Kentucky after reviewing the authorities refused to be frightened by the bugaboo that numerically a greater number of courts take a contrary view. It said:

"We are convinced that they by doing so are inviting destruction of the constitutional barriers separating the departments of government, and that our interpretation is much the sounder one and is essential to the future preservation of our constitutional form of government as originally intended by the forefathers who conceived it. * * * Such power (of appointment) on the part of the Legislature, if a full exercise of it should be persisted in, would enable it to gradually absorb to itself the patronage and control of the greater part of the functioning agencies of the state and county governments, and, thus endowed, it would be little short of a legislative oligarchy."

It is of importance, therefore, not to be confused by State decisions, and invariably to return to the exact provisions of the Philippine Organic Law. It is the intention of the authors of that Law which should be searched out and effectuated.

The right to appoint to office has been confided, with certain well defined exceptions, by the Government of the

United States to the executive branch of the government which it has set up in the Philippines. Let the Organic Law speak upon this proposition.

The original government inaugurated in the Philippines after American occupation was military in nature, and exercised all the powers of government, including, of course, the right to select officers. The original civil authority with administrative functions established here was the second Philippine Commission. President McKinley, in his Instructions to the Commission of April 7, 1900, ever since considered as the initial step taken to introduce a constitutional government, provided that until further action should be taken by Congress or otherwise, "The Commission will also have power * * * to appoint to office such officers under the judicial, educational, and civil-service systems, and in the municipal and departmental governments, as shall be provided for." When the first Civil Governor was appointed on June 21, 1901, the President again took account of the power of appointment in the following language : "The power to appoint civil officers, heretofore vested in the Philippine Commission, or in the Military Governor, will be exercised by the Civil Governor with the advice and consent of the Commission." The Congress when it came to make legislative provision for the administration of the affairs of civil government in the Philippine Islands, in the Act of Congress of July 1, 1902, the Philippine Bill, "approved, ratified, and confirmed," the action of the President in creating the Philippine Commission in the manner and form set forth in the Instructions of the President, and in creating the office of Civil Governor and authorizing said Civil Governor to exercise the powers of government to the extent and in the manner set forth in the executive order dated June 21, 1901. (Philippine Bill, sec. 1.) Congress in the same law provided that the Islands "shall continue to be governed as thereby and herein provided." (See Opinion of Attorney-General Araneta on the power of the Governor-General to appoint and remove civil officers, 3 Op. Atty.-Gen., 563.)

Thus stood the right to appoint to office for fourteen years.

The Organic Act of August 29, 1916, included what follows on the subject of appointments. The Governor-General "shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint," (Organic Act, sec. 21.) The exception to the general grant is that the Philippine Legislature "shall provide for the appointment and removal of the heads of the executive departments by the Governor-General." (Organic Act, sec. 22.) Each House of the Philippine Legislature may also select a presiding officer, a clerk, a sergeant at arms, and such other officers and assistants as may be required.

(Organic Act, sec. 18.) The Philippine Legislature is authorized to choose two Resident Commissioners to the United States. (Organic Act, sec. 20.) The prohibition on the local Legislature, which has been thought of. as referring to the Resident Commissioners, is that "No Senator or Representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the Legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term." (Organic Act, sec. 18.)

The Administrative Code provides the following: "In addition to his general supervisory authority, the Governor-General shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth," including the special powers and duties "(a) To nominate and appoint officials, conformably to law, to positions in the service of the Government of the Philippine Islands. (b) To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the Government of the United States, the Governor-General may at any time remove a person from any position of trust or authority under the Government of the Philippine Islands." (Sec. 64 [a], [b],) The Administrative Code lists the officers appointable by the Governor-General. (Sec. 66.)

It will be noticed that the Governor-General, in addition to being empowered to appoint the officers authorized by the Organic Act and officers whom thereafter he might be authorized to appoint, was to continue to possess the power to appoint such officers as could be appointed by him when the Organic Act was approved. The careful phraseology of the law and the connection provided by the word "now" with prior Organic laws is noteworthy. It would not be at all illogical to apply the same rule to the Governor-General in his relations with the Legislature which the judiciary uniformly applies to the courts in their relations with the Legislature, which is, that the Legislature may add to, but may not diminish, the jurisdiction of the courts—The Legislature may add to, but may not diminish, the power of the Governor-General. (Organic Act, sec. 26; *Barrameda vs. Moir* [1913], 25 Phil., 44; *In re Guarina*, supra; *U. S. vs. Limsiongco*, supra.)

It will also not escape attention that the only reference made to appointments by the Legislature relates to the selection of Secretaries of Departments, of officers and employees for the Legislature, and of Resident Commissioners, from which it would naturally be inferred that no other officers and employees may be chosen by it. The exceptions made in favor of the Legislature strengthen rather than weaken the grant to the executive. The specific mention of the authority of the Legislature to name certain officers is indicative of a purpose to limit the legislative authority in the matter of selecting officers. The expression of one thing in a constitution is necessarily the exclusion of things not expressed. Had it been intended to give to the Philippine Legislature the power to name individuals to fill the offices which it has created, the grant would have been included among the legislative powers and not among the executive powers. The administrative control of the Government of the Philippine Islands by the Governor-General to whom is confided the responsibility of executing the laws excludes the idea of legislative control of administration.

Possibly, the situation may better be visualized by approaching the question by a process of elimination. Is the power of appointment judicial? No one so contends. Is the power of appointment legislative? Not so if the intention of the Organic Law be carried out and if the Legislature be confined to its law-making function. Is the power of appointment executive? It is.

The exact question of where the power of appointment to office is lodged has never heretofore arisen in this jurisdiction. But a decision of this court and a controlling decision of the United States Supreme Court are in point.

In *Concepcion vs. Paredes*, supra, this court had before it a law which attempted to require a drawing of lots for judicial positions in derogation of executive power. The case was exhaustively argued and after prolonged consideration, the questioned portion of the law was held invalid as in violation of the provisions of the Organic Act. Following the lead of *Kentucky*, it was announced that "Appointment to office is intrinsically an executive act involving the exercise of discretion."

In the case of *Myers vs. United States* ([1926], 272 U. S., 52; 71 Law1, ed., 160), the United States Supreme Court had presented the question whether, under the Constitution, the President has the exclusive power of removing executive officers of the United States whom he has appointed by and with the advice and consent of the Senate. The answer was that he has.

The decision is epochal. The Chief Justice quoted from Madison the following:

" 'If there is a principle in our Constitution, indeed in any free Constitution more sacred than another, it is that which separates the legislative, executive and judicial powers. If there is any point in which the separation of the legislative and executive powers ought to be maintained with great caution, it is that which relates to officers and offices.

" 'The powers relative to offices are partly legislative and partly executive. The legislature creates the office,

defines the powers, limits its duration and annexes a compensation. This done, the legislative power ceases. They ought to have nothing to do with designating the man to fill the office. That I conceive to be of an executive nature. Although it be qualified in the Constitution, I would not extend or strain that qualification beyond the limits precisely fixed for it. We ought always to consider the Constitution with an eye to the principles upon which it was founded. In this point of view, we shall readily conclude that if the legislature determines the powers, the honors, and emoluments of an office, we should be insecure if they were to designate the officer also. The nature of things restrains and confines the legislative and executive authorities in this respect; and hence it is that the Constitution stipulates for the independence of each branch of the Government" (1 Annals of Congress, 581, 582. Also see Madison in The Federalist, Nos. 47, 76.)

The distinguished Chief Justice said:

* * * The constitution was so framed as to vest in the Congress all legislative powers therein granted, to vest in the President the executive power, and to vest in one Supreme Court and such inferior courts as Congress might establish, the judicial power. From this division on principle, the reasonable construction of the Constitution must be that the branches should be kept separate in all cases in which they were not expressly blended, and the Constitution should be expounded to blend them no more than it affirmatively requires. Madison, 1 Annals of Congress, 497.

* * * * *

"The vesting of the executive power in the President was essentially a grant of the power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates. This view has since been repeatedly affirmed by this court. * * * As he is charged specifically to take care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further- implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible. (Fisher Ames, 1 Annals of Congress, 474.) It was urged that the natural meaning of the term 'executive power' granted the President included the appointment and removal of executive subordinates. If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood.

"It is quite true that in state and colonial governments at the time of the Constitutional Convention, power to make appointments and removals had sometimes been lodged in the legislatures or in the courts, but such a disposition of it was really vesting part of the executive power in another branch of the government.

* * * * *

"We come now to a period in the history of the Government when both Houses of Congress attempted to reverse this constitutional construction and to subject the power of removing executive officers appointed by the President and confirmed by the Senate to the control of the Senate, indeed finally to the assumed power in Congress to place the removal of such officers anywhere in the Government.

* * * * *

"The extreme provisions of all this legislation were a full justification for the considerations so strongly advanced by Mr. Madison and his associates in the First Congress, for insisting that the power of removal of executive officers by the President alone was essential in the division of powers between the executive and the legislative bodies. It exhibited in a clear degree the paralysis to which a partisan Senate and Congress could subject the executive arm and destroy the principle of executive responsibility, and separation of the powers sought for by the framers of our Government, if the President had no power of removal save by consent of the Senate. It was an attempt to redistribute the powers and minimize those of the President.

* * * * *

"For the reasons given, we must therefore hold that the provision of the law of 1876 by which the unrestricted power of removal of first class postmasters is denied to the President is in violation of the Constitution and invalid." Membership in the Committee created by Acts Nos. 2705 and 2822 is an office. No attempt will be made to accomplish the impossible, which is to formulate an exact judicial definition of the term "office." The point is that the positions in question constitute an "office," whether within the meaning of that word as used in the Code of Civil Procedure under the topic "Usurpation of Office," and in the jurisprudence of Ohio from which these portions of the Code were taken; whether within the local definitions of "office" found in the Administrative Code and the Penal Code; or whether within the constitutional definitions approved by the United States Supreme Court. (Code of Civil Procedure, ' sees. 197 et seq., 519; Act No. 136, sec. 17; State vs. Kennon, supra, cited approvingly in Sheboygan Co. vs. Parker [1865], 3 Wall., 93; Administrative Code, sec. 2; Penal Code, arts. 264, 401.) Paraphrasing the United States Supreme Court in a late decision, there is not lacking the essential elements of a public station, permanent in character, created by law, whose incidents and duties were prescribed by law. (Metcalf & Eddy vs. Mitchell [1926], 269 U. S., 514; U. S. vs. Maurice [1823], 2 Brock., 96; U. S. vs. Hartwel [1867], 6 Wall., 385.) The Legislature did more than add incidental or occasional duties to existing executive offices for two of the members of the voting committee are representatives of the legislative branch. The Supreme Court of North Carolina has held that the Act of the General Assembly giving to the President of the Senate and the Speaker of the House of Representatives the power to appoint proxies and directors in all corporations in which the State has an interest, creates a public office and fills the same by appointment of the Legislature. (Clark vs. Stanley [1872], 66 N. C, 28; Howerton vs. Tate [1873], 68 N. C, 498; Shoemaker vs. U. S. [1892], 147 U. S., 282; Advisory Opinion to Governor [1905], 49 Fla., 269; Mechem on Public Officers, Ch. I.)

To tell the truth, it is possible that the earnestness of counsel has just led us to decide too much. Not for a moment should there be dismissed from our minds the unusual and potentially effective proviso of section 22 of the Organic Act, "That all executive functions of the government must be directly under the Governor-General or within one of the executive departments under the supervision and control of the Governor-General." At the very least, the performance of duties appurtenant to membership in the voting committee is an executive function of the Government, which the Organic Act requires must be subject to the unhampered control of the Governor-General. The administrative domination of a governmentally organized and controlled corporation is clearly not a duty germane to the law-making power.

The incorporation of the National Coal Company has not served to disconnect the Company or the stock which the Government owns in it from the Government and executive control. The Philippine Legislature is empowered to create and control private corporations. (Martinez vs. La Asociacion de Senoras Damas del Santo Asilo de Ponce [1909], 213 U. S., 20.) The National Coal Company is a private corporation. (National Coal Company vs. Collector of Internal Revenue [1924], 46 Phil., 583.) By becoming a stockholder in the National Coal Company, the Government divested itself of its sovereign character so far as respects the transactions of the corporation. (Bank of the U. S. vs. Planters' Bank of Georgia [1824], 9 Wheat., 904.) Unlike the Government, the corporation may be sued without its consent, and is subject to taxation. Yet the National Coal Company remains an agency or instrumentality of government. Mr. Chief Justice Marshall in speaking of the Bank of the United States said, "It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation." (Osborn vs. Bank of the U. S. [1824], 9 Wheat., 738; National Bank vs. Commonwealth [1869], 9 Wall., 353; Railroad Co. vs. Peniston [1873], 18 Wall., 5; Chesapeake & Delaware Canal Co. vs. U. S. [1918], 250 U. S., 123.) Of the National Coal Company, it has been said by Mr. Justice Johnson as the organ of the court in National Coal Company vs. Collector of Internal Revenue, supra, that "The Government of the Philippine Islands is made the majority stockholder, evidently in order to insure proper governmental supervision and control, and thus to place the Government in a position to render all possible encouragement, assistance and

help in the prosecution and furtherance of the company's business." The analogy is closer in the companion National Bank case, No. 27225.

It further is incontrovertible that the Government, like any other stockholder, is justified in intervening in the transactions in the corporation, and in protecting its property rights in the corporation. Public funds were appropriated to create the National Coal Company. Those funds were used to purchase stock. The voting of the government stock is the prerogative of the stockholder, not the prerogative of the corporation. It is a transaction in, but not of, the corporation. The stock is property. The Government, the owner of the majority stock in the company, naturally dominates the management of its property. The Government may enforce its policies and secure relief in and through the corporation and as a stockholder.

The situation will be better understood if it be recalled that, in addition to the National Coal Company (Acts Nos. 2705 and 2822), the Philippine Legislature has created the Philippine National Bank (Acts Nos. 2612, 2747, 2938, and 3174), the National Petroleum Company (Act No. 2814), the National Development Company (Act No. 2849), the National Cement Company (Act No. 2855), and the National Iron Company (Act No. 2862). The aggregate authorized capital stock of these companies is P54,500,000. The Legislature has in each of these instances directed that a majority of the shares of stock shall be purchased for the Government, and has appropriated money for this purpose.

There have likewise been authorized corporations for the promotion of the merchant marine (Act No. 2754). The stock of the Manila Railroad Company has been purchased for the Government. (Acts Nos. 2574, 2752, and 2923.) All these are conspicuous instances of a paternally inclined government investing large sums in business enterprises which after acquisition or organization have vitally concerned the Government. In all of the companies mentioned, the stock is to be voted by a committee or board of control, consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. The power of the majority stockholders to vote the government stock in the corporation carries with it the right, under our Corporation Law, to elect all the directors, to remove any or all of them, and to dissolve the corporation by voluntary proceedings. (Corporation Law, sees. 31, 34, 62.) In the case of the Philippine National Bank, the law explicitly enumerates various functions of the bank which may not be performed without the express approval of the Board of Control. (Act No. 2938.)

Very important property rights are involved in the transactions in the governmentally directed corporations. Just as surely as the duty of caring for government property is neither judicial nor legislative in character is it as surely executive. Yet a majority of the voting committee or board of control is made up of the presiding officers of the two houses of the Legislature and they are in a position to dictate action to the directors and subordinate personnel of these corporations.

Based on all the foregoing considerations, we deduce that the power of appointment in the Philippines appertains, with minor exceptions, to the executive department; that membership in the voting committee in question is an office or executive function; that the National Coal Company and similar corporations are instrumentalities of the government; that the duty to look after government agencies and government property belongs to the executive department; and that the placing of members of the Philippine Legislature on the voting committee constitutes an invasion by the Legislative Department of the privileges of the Executive Department. Under a system of government of delegated powers, under which delegation legislative power vests in the Philippine Legislature and executive power vests in the Governor-General, and under which delegation a general power of appointment resides in the Governor-General and a specified power of appointment resides in the Philippine Legislature, the latter cannot directly or indirectly, perform functions of an executive nature through the designation of its presiding officers as majority members of a body which has executive functions.

That is the meaning we gather from the tri-partite theory of the division of powers. That is the purport of the provisions of the Organic Law. That has been the decided trend of persuasive judicial opinion.

The intimation contained in the conclusions just reached does not necessarily mean that the plaintiff will be privileged to substitute the directors designated by the Governor-General for those designated by the two presiding officers in the Legislature. The burden has heretofore been on the defendants. From this point, it will be on the plaintiff. It is well established in quo warranto proceedings that the failure of the defendant to prove his title does not establish that of the plaintiff. (*People vs. Thatcher* [1874], 10 N. Y., 525.)

The answer to the problem comes from two directions. The Acting Attorney-General of the United States finds the solution in the supreme executive power entrusted to the Governor-General, while counsel for the plaintiff advance the rule of statutory construction pertaining to partial invalidity. We are frank to say that we experience difficulty in following the lead of the law officer of the Government of the United States. The Governor-General since the approval of the last Organic Act has had no prerogative powers. His powers are so clearly and distinctly stated that there ought to be no doubt as to what they are. Like the Legislature and the judiciary, like the most inconspicuous employee, the Governor-General must find warrant for his every act in the law. At this stage of political development in the Philippines, no vague residuum of power should be left to lurk in any of the provisions of the Organic Law.

Counsel for the plaintiff rely on a decision of this court (*U. S. vs. Rodriguez* [1918], 38 Phil., 759) as best expressing the local rule regarding statutes void in part. Counsel for the defendants cite an earlier case (*Barrameda vs. Moir* [1913], 25 Phil., 44). As the principle announced in the last cited case is the more comprehensive and is much fairer to the defendants, we give it preference. It was there announced:

"Where part of a statute is void, as repugnant to the Organic Law, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. But in order to do this, the valid portion must be so far independent of the invalid portion that it is fair to presume that the Legislature would have enacted it by itself if they had supposed that they could not constitutionally enact the other. Enough must remain to make a complete, intelligible, and valid statute, which carries out the legislative intent. The void provisions must be eliminated without causing results affecting the main purpose of the Act in a manner contrary to the intention of the Legislature. The language used in the invalid part of a statute can have no legal force or efficacy for any purpose whatever, and what remains must express the legislative will independently of the void part, since the court has no power to legislate."

Omitting reference to the President of the Senate and the Speaker of the House of Representatives in section 4 of Act No. 2705, as amended by section 2 of Act No. 2822, it would then read: "The voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General." Would the court be justified in so enforcing the law without itself intruding on the legislative field? The Philippine Legislature, as we have seen, is authorized to create corporations and offices. The Legislature has lawfully provided for a National Coal Company and a committee to vote the government stock in that company, but has unlawfully provided for two of its members to sit in the committee. Would this court be doing violence to the legislative will if the voting power be continued solely in the hands of the Governor-General until different action is taken by the Legislature? We conclude that we would not, for the reason that the primordial purpose of the Legislature was "to promote the business of developing coal deposits * * * and of mining * * * and selling the coal contained in said deposits." (Act No. 2705, sec. 2; Act No. 2822, sec. 1.) The incidental purpose of the Legislature was to provide a method to vote the stock owned by the Government in the National Coal Company. In the words of the United States Supreme Court, "The striking out is not necessarily by erasing words, but it may be by disregarding the unconstitutional provision and reading the statute as if that provision was not there." (*Eilroad Companies vs. Schutte* [1880], 103 U. S., 118; *State vs. Westerfield* [1897], 23

Nev., 468; State vs. Washburn, *supra*; State vs. Wright [1913], 251 Mo., 325; State vs. Clausen [1919], 107 Wash., 667; 1 Lewis Sutherland, *Statutory Construction*, Second ed. Ch. IX.)

The decision of the United States Supreme Court in *Clayton vs. People* ([1890], 132 U. S., 632) is particularly applicable on account of relating to the validity of an Act passed by a territorial legislature, the question of partial invalidity, and the contention likewise here made, that since the law in question had been on the statute books for a number of years, it must be considered as having been impliedly ratified by the Congress. An Act of the Legislature of Utah of 1878 had declared that the auditor and the treasurer shall be elected by the voters of the territory. In a decision handed down in 1886, the Supreme Court of the Territory of Utah held the Act void because in conflict with the organic act creating the territory, which provided that the governor, with the consent of the legislative council, shall appoint such officers. It further held that a territorial statute invalid when enacted is not validated by the failure of the Congress expressly to disapprove it. (*People vs. Clayton* [1886], 4 Utah, 421.) The United States Supreme Court on appeal affirmed the judgment. It said: "It can hardly be admitted as a general proposition that under the power of Congress reserved in the Organic Acts of the Territories to annul the Acts of their Legislatures the absence of any action by Congress is to be construed to be a recognition of the power of the Legislature to pass laws in conflict with the Act of Congress under which they were created. * * * We do not think that the acquiescence of the people, or of the Legislature of Utah, or of any of its officers, in the mode for appointing the auditor of public accounts, is sufficient to do away with the clear requirements of the Organic Act on that subject. It is also, we think, very clear that only that part of the Statute of Utah which is contrary to the Organic Act, namely, that relating to the mode of appointment of the officer, is invalid; that so much of it as creates the office of auditor of public accounts and treasurer of the Territory is valid; and that it can successfully and appropriately be carried into effect by an appointment made by the governor and the Council of the Territory, as required in the Act of Congress."

On the assumption, however, that the entire provision authorizing the voting committee be considered as wiped out, yet we think it would still devolve on the Governor-General to protect the public interests and public property.

He is made responsible for the execution of the laws, and he would be unfaithful to that trust if, through inaction, instrumentalities of government should fail to function and government property should be permitted to be dissipated.

Counsel for the defendants have injected the argument into the discussion. that, as the President of the Senate and the Speaker of the House of Representatives are at least *de facto* officers, their right to act as members of the voting committee cannot be collaterally attacked, and that the defendants in this suit are the *de jure* members of the board of directors of the National Coal Company. Contentions such as these are out of harmony with the avowed purpose to avoid technical obstruction, and to secure a definite expression of opinion on the main issue. However, it remains to be said that this is a direct proceeding to test the right of the defendants to the offices to which they consider themselves entitled. The inquiry then may go, as is proper in *quo warranto* proceedings, to the extent of determining the validity of the act authorizing the offices. The fallacy of the argument relating to the *de facto* doctrine is that, although there may be a *de facto* officer in a *de jure* office, there cannot be a *de facto* officer in a *de facto* office.

There is no such thing as a *de facto* office under an unconstitutional law. (*Norton vs. Shelby County* [1886], 118 U. S., 425.)

Before terminating, a few general observations may be appropriate. The case has been carefully prepared and elaborately argued. All parties appear to desire to have the matter at issue definitely determined. We have

endeavored to accommodate them. But in such a bitterly fought contest, the ingenuity of counsel presses collateral points upon us which the court need not resolve. We thus find it unnecessary to express any opinion on the propriety or legality of Executive Order No. 37,, on that portion of section 18 of the Organic Act which disqualifies Senators or Representatives for election or appointment to office, and on other subsidiary matters. Need it be added that the court is solely concerned with arriving at a correct decision on a purely legal question.

Every other consideration to one side, this remains certain—The Congress of the United States clearly intended that the Governor-General's power should be commensurate with his responsibility. The Congress never intended that the Governor-General should be saddled with the responsibility of administering the government and of executing the laws but shorn of the power to do so. The interests of the Philippines will be best served by strict adherence to the basic principles of constitutional government.

We have no hesitancy in concluding that so much of section 4 of Act No. 2705, as amended by section 2 of Act No. 2822, as purports to vest the voting power of the government-owned stock in the National Coal Company in the President of the Senate and the Speaker of the House of Representatives, is unconstitutional and void. It results, therefore, in the demurrer being overruled, and as it would be impracticable for the defendants to answer, judgment shall be rendered ousting and excluding them from the offices of directors of the National Coal Company. So ordered, without costs.

Street, Ostrand, Johns, and Romualdez, JJ., concur.

CONCURRING:

JOHNSON, J.,

Under the admitted facts the writ of quo warranto prayed for should be granted. Milton E. Springer, Dalmacio Costas, and Anselmo Hilario are unlawfully and illegally holding and exercising the position of members of the Board of Directors of the National Coal Company and should be ousted and altogether excluded therefrom; that Romarico Agcaoili, H. L. Heath, and Salvador Lagdameo have been duly and legally elected as members of the Board of Directors of the National Coal Company, and judgment is rendered that they be inducted into said position to take charge thereof and to perform the duties incumbent upon them as members of said Board of Directors.

The principal questions involved in this action are:

- (a) May the Legislative Department of the Government of the Philippine Islands adopt a law and provide that some of its members shall take part in its execution?
- (b) Was the Governor-General of the Philippine Islands authorized, under the law, to promulgate Executive Order No. 37? and,
- (c) Were the respondents legally elected as members of the Board of Directors of the National Coal Company? Inasmuch as these questions involve respective powers of two great departments of the Government, they should be seriously considered by this court and not to be lightly resolved on.

These questions were presented to the Supreme Court of the Philippine Islands for solution in an original action, praying for the issuance of the extraordinary legal writ of quo warranto. In relation with the questions involved, the specific and definite purpose of the action is (a) to inquire into the right of the respondents, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario to act as members of the Board of Directors of the National Coal

Company, a private corporation created by special charter by an Act of the Philippine Legislature; and (b) to have inducted into office, in their place and stead, said Romarico Agcaoili, H. L. Heath, and Salvador Lagdameo.

To the petition presented by the Government of the Philippine Islands (ex rel. Romarico Agcaoili, H. L. Heath, and Salvador Lagdameo) the respondents demurred. The facts are therefore admitted. A question of law only is presented for solution.

THE FACTS UPON WHICH THE ACTION IS BASED

The facts upon which the petition is based are few, clear, and well defined. There is no dispute upon the facts. They are briefly: That the National Coal Company is a private corporation created by Act No. 2705 (vol. 12, Public Laws, p. 216, March 10, 1917) as amended by Act No. 2822 (vol. 14, Public Laws, p. 202, March 5, 1919). Act No. 2705, as amended by Act No. 2822, constitutes the charter of said company. Said Acts are not public laws. They are private Acts of the Philippine Legislature. They provide that said company shall be subject to the provisions of the Corporation Law (Act No. 1459) in so far as they are not inconsistent with the provisions of said charter, and shall have the general powers mentioned in said Act (Act No. 1459) and such other powers as may be necessary to enable it to prosecute the business of developing coal deposits in the Philippine Islands, and mining, extracting, transporting, and selling the coal contained in said deposits.

Said charter provided that the capital of said company shall be P3,000,000, divided into 30,000 shares of stock with a par value of P100 per share.

Said charter further provided that the Governor-General on behalf of the Government of the Philippine Islands, shall subscribe for 51 per centum of said capital stock, and that the "voting power of all such stock owned by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives." At the time of the adoption of said charter the Philippine Legislature appropriated the sum of P1,530,000 for investment in the stock of said company to be acquired by the Government of the Philippine Islands.

The National Coal Company was organized in accordance with the provisions of its charter. . A Board of Directors was elected from time to time. Its business was carried on by said Board of Directors. Finally a legal question arose concerning the right of the President of the Senate and the Speaker of the House of Representatives to act with the Governor-General in voting the stock of said company.

That question was referred to the Judge Advocate General of the United States Army as well as to the Attorney-General of the United States. Upon full consideration of the question, the Judge Advocate General and the Attorney-General reached the conclusion that the President of the Senate and the Speaker of the House of Representatives were without authority in law to take part in the voting of the stock owned by the Government, for the reason that the particular provision of the charter granting or creating said power as illegal and void, and that the participation of the President of the Senate and the Speaker of the House of Representatives in voting said stock was an illegal encroachment upon the powers of the Executive Department of the Government. Upon receiving said opinions, the Governor-General evidently for the purpose of avoiding criticism that he was permitting an illegal and void law to be enforced and, if possible, impeachment proceedings for a failure or refusal on his part to comply with the law of the land, issued an executive order, known as Executive Order No. 37. Executive Order No. 37 provides:

"Whereas it is held in an opinion of the Judge Advocate General of the United States Army, confirmed by an opinion of the Attorney-General of the United States, received at the Office of the Executive, November seventh, nineteen hundred and twenty-six, that the provisions of the statutes passed by the Philippine Legislature creating a 'Board of Control' or 'Committee' and enumerating the duties and powers thereof, with respect to certain corporations in which the Insular Government is the owner of stock, are nullities; that the

remaining portions of said statutes are valid; that the duties imposed by said statutes upon said Board or Committee are executive in their nature, and subject to the provisions of the Organic Act relating to the executive functions; that said executive duties and powers may be performed as in other cases not specifically provided for by law.

"Now, therefore, acting under authority of said opinions, the duties and powers heretofore exercised by said 'Board of Control' or 'Committee' shall, from and after this date, be exercised solely by the Governor-General pursuant to the executive power vested in him by the Organic Act."

Notice of said Executive Order was duly and timely given by the Governor-General to the President of the Senate and the Speaker of the House of Representatives. The Governor-General further notified the President and Speaker that "he would thereafter exercise exclusively the duties and powers" with respect to the voting of the stock held by the Government of the Philippine Islands in the National Coal Company.

At the time of the issuance of said Executive Order No. 37 or thereabouts the Government of the Philippine Islands was the registered owner of about 29,975 shares out of the total of 30,000 shares of said company. The President of the Senate and the Speaker of the House of Representatives protested against the alleged assumed authority on the part of the Governor-General to vote said government stock and insisted upon their right to participate in the voting of the same.

Later, and without going into great detail, a meeting of the stockholders was called for the purpose of electing members of the Board of Directors of said company. In accordance with the preannounced intention, the President of the Senate and the Speaker of the House of Representatives attended the meeting of the stockholders of the company and then and there asserted their right, as a majority of the "Voting Committee," to vote the stock of the Government. Against the objections and protest of the Governor-General they were permitted by the Chairman of the meeting to vote all of the stock held by the Government of the Philippine Islands. They deposited a ballot purporting to be signed by them on behalf of the said "Voting Committee" for the election as Directors of Alberto Barretto, Frank B. Ingersoll, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario. Notwithstanding the objection and protest of the Governor-General to the acceptance of said ballot, the Chairman permitted it to be deposited in favor of the persons for whom it was cast. At the same meeting of the stockholders and at the same time the Governor-General, insisting upon his sole right to vote the stock owned by the Government of the Philippine Islands, cast his ballot representing all of the stock of the Government, in favor of Alberto Barretto, Frank B. Ingersoll, Romarico Agcaoili, H. L. Heath, and Salvador Lagdameo, which ballot was rejected by the Chairman and the same was not allowed to be deposited.

Against the ruling of the Chairman, permitting the ballot of the President of the Senate and the Speaker of the House of Representatives to be deposited on behalf of the said "Voting Committee" a protest of the Governor-General was duly and timely presented. Notwithstanding said protest on the part of the Governor-General, that the President of the Senate and the Speaker of the House of Representatives had no authority to vote the stock of the Government nor to participate in the voting of the same, the Chairman declared that Alberto Barretto, Frank B. Ingersoll, Milton E. Springer, Dalmacio Costas, and Anselmo Hilario had each received a majority of the votes cast and that said persons had been duly elected as members of the Board of Directors of the National Coal Company.

It will be noted that both the Governor-General, and the President of the Senate and Speaker of the House of Representatives voted for the election of Alberto Barretto, and Frank B. Ingersoll. There is no objection in this record to the right of said persons to act as members of the Board of Directors. The contention of the Government is, that Romarico Agcaoili, H. L. Heath and Salvador Lagdameo had been duly and legally elected as members of the Board of Directors by the vote of the Governor-General, and that Milton E. Springer, Dalmacio Costas, and

Anselmo Hilario had not been duly and legally elected as members of the Board of Directors by the vote of the President of the Senate and the Speaker of the House of Representatives, and that they should be ousted and altogether excluded from their office.

Considering the foregoing facts we have the question squarely presented, whether the persons elected by the Governor-General in voting the stock owned by the Government had been duly and legally elected directors of said company, or whether the persons elected by the President of the Senate and the Speaker of the House of Representatives were legally elected as such Directors.

It can scarcely be contended that the President of the Senate and the Speaker of the House of Representatives, when the Governor-General is present at a meeting of the stockholders of said company, have a right to vote all of the stock of said company, to the entire exclusion of the Governor-General. ' There is nothing in the law which indicates the manner in which the stock owned by the Government of the Philippine Islands may be voted when a difference of opinion exists among the members of the "Voting Committee" as to how the same shall be voted.

Without discussing the method of voting the stock when there is a difference of opinion in the "Voting Committee" as to how it shall be voted, we pass to the question, whether or not the President of the Senate and the Speaker of the House of Representatives, as members of the Legislative Department of the Government, have any right whatever to participate in the voting of the stock belonging to the Government of the Philippine Islands.

THE RIGHT OF THE LEGISLATIVE DEPARTMENT OF THE GOVERNMENT TO EXECUTE OR TO ASSIST IN THE EXECUTION OF ITS LAWS.

The Legislative Department of the Government adopted the law creating the charter of the National Coal Company. The Legislative Department of the Government provided a method, in said charter, by which it, through the President of the Senate and the Speaker of the House of Representatives, should assist in the execution of said law.

It has been stated so frequently by eminent statesmen and jurists, that it scarcely needs the citation of authorities to support the doctrine, that wherever the American flag flies as an emblem of Government, the powers of that Government are divided into three distinct and separate departments—Executive, Legislative and Judicial—each acting in its own field, under its own authority and general powers of the government. While the line of demarcation, by division, is easily discerned, it is at times difficult to follow in actual cases. There is a constant overlapping of the different departments of the government which cannot be avoided, and yet such overlapping generally results in the greater stability and permanency of the government. It is also a statement, based upon political science, that scarcely needs repetition, that one department overreaches its powers whenever it steps across the line of demarcation and attempts to function within the field of another department of government under the American flag. Under the form of government established in the Philippine Islands, one department of the government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department. It is the general duty of the legislative branch of the government to make such laws and regulations as will effectually conserve the peace and good order and protect the lives and the property of the citizens of the state. It is the duty of the Governor-General to take such steps as he deems wise and necessary for the purpose of enforcing such laws.

Every delay and hindrance and obstacle which prevents a strict enforcement of laws necessarily tends to jeopardize public interest and the safety of the whole people. (Barcelon vs, Baker and Thompson, 5 Phil., 87.)

The different departments of the government are coordinate, coequal and each functions independently,

uncontrolled and uncontrollable by the other. To that statement, however, there exist exceptions. For example, the executive department of the government may annul and set aside acts of the legislative department of the government under its power of veto. So may the legislative department of the government annul and set aside actions of the executive department of the government by repealing or amending laws. So likewise the judicial department of the government may annul and set aside acts of the legislative department of the government when such acts are contrary to the fundamental laws of the state or beyond the powers of the legislative department. But in every case, where one department, as above indicated, to any extent attempts to control the effects of acts of the other department or departments, it is acting under its own powers and within its own department.

The Constitution of the United States as well as the Constitution of each of the states of the Union provide that the government shall be divided into three departments: executive, legislative, and judicial. George Washington, who was the President of the Constitutional Convention which adopted the United States Constitution, in a letter written to his friend Lafayette in 1788, referring to the complete separation of the powers of the government, said: "These powers are so distributed among the legislative, executive, and judicial branches, in which the powers of the government are arranged that it can never be in danger of degenerating into a monarchy, an oligarchy, an aristocracy, or any other despotic form of government as long as there shall remain any virtue in the body of the people."

Mr. Thomas Jefferson, who has been quoted on questions relating to the meaning, force and application of the provisions of the Constitution of the United States perhaps more than any other one person, said: "The great principle established by the Constitution of the United States which was never before fully established, was the separation of the delegated power into the hands of the executive, the legislative department, and the judiciary. This is our system of check and balances which makes ours a 'government of laws and not of men/' " On another occasion Mr. Thomas Jefferson said, in discussing the necessity of limiting the power of government: "When it comes to a question of power—trust no man, bind him down from mischief, by the strong chains of the Constitution."

By the well known distribution of the powers of government among the executive, legislative, and judicial departments by the constitution, there was provided that marvelous scheme of check and balances which has been the wonder and admiration of the statesmen, diplomats, and jurists in every part of the civilized world.

The balance of the powers of government provided for in the constitution as well as in the charter of the Philippine Government was not the result of chance. The various parts did not fall into place merely through the vicissitudes of circumstance. They were devised by careful foresight; each in a measure dependent upon the others and not possessed of so much independence as to give freedom and courage in the exercise of their functions. Each V^{as} to move within its respective spheres as the bodies of the celestial system march along the pathways of the heaven. It is a fundamental rule of constitutional law that no department of government has power to perform nor to assist in performing the functions of another. The executive department is limited to the execution of valid laws adopted by the legislative department of the government. The legislative department is limited to the enactment of laws and to the investigation of facts necessary for wise legislation. The judicial department of the government is limited to the administration of justice and the interpretation of laws. In case of differences between the executive and legislative departments as to their respective powers, it has long since been conceded that the Supreme Court shall act as an umpire. *Marbury vs. Madison* [1803], 1 Cranch [U. S.], 137; *Rice vs. Austin*, 19 Minn., 74; *Luther vs. Borden*, 7 Howard [U. S.], 44; *Martin vs. Mott*, 12 Wheat [U. S.], 19.)

No government, past or present, has more carefully and watchfully guarded and protected, by law, the individual rights of life and property of its citizens than the governments under the American flag. Each of the three departments of the government has had separate and distinct functions to perform in this great labor. The history

of the United States, covering nearly a century and a half, discloses the fact that each department has performed its part well. No one department of the government can or ever has claimed, within its discretionary power, a greater zeal than the others in its desire to promote the welfare of the individual citizens, entities or corporations. They are all joined together in their respective spheres, harmoniously working to maintain good government, peace and order, to the end that the rights of each citizen be equally protected. No one department can claim that it has a monopoly of these benign purposes of the government. Each department has an exclusive field within which it can perform its part within certain legal and discretionary limits. No other department can claim a right to enter these legal and discretionary limits and assume to act there. No presumption of an abuse of these legal and discretionary powers by one department will be considered or entertained by another. Generally such conduct on the part of one department, instead of tending to conserve the highest interest of the government and its citizens and the rights of the people, would directly tend to destroy the confidence of the people in the government and to undermine the very foundations of the government itself. (*Barcelon vs. Baker and Thompson*, 5 Phil., 87, 115; *Forbes vs. Chuoco Tiaco and Crossfield*, 16 Phil., 534.)

The Government of the Philippine Islands, like the Government of the United States, is based upon the fundamental principle of the separation of the executive, legislative, and judicial powers. Subject only to the exceptions especially established by the organic act, neither of the great departments of the government may validly exercise any of the powers conferred upon either of the others. In the case of *Abueva vs. Wood* (45 Phil., 612) it was said: "The duties of each department are well denned and limited to certain fields of governmental operation." Each department exercises functions as independent of each other as the Federal or state governments of the Union. It was not intended by the framers of the theory of our government that the duties which had been assigned to the executive should be performed by the legislative, nor that the duties which had been assigned to each of them should be performed and directed by the judicial department. (*Sinking Fund Cases*, 99 U. S., 700, 718; *Clough vs. Curtis*, 134 U. S., 361; *Abueva vs. Wood*, supra.) No well organized government or business even can be well managed if one department can enter upon the field of another and attempt to administer or interfere in the administration of the other. (*Abueva vs. Wood*, supra; *Barcelon vs. Baker and Thompson*, 5 Phil., 87; *U. S. vs. Bull*, 15 Phil., 7, 27.)

In the case of *Kilbourne vs. Thompson* (103 U. S., 168) it was said: "It is also essential to the successful working of this system, that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other."

Section 17 of the Administrative Code of 1917 (Act No. 2711) provides: "The executive, legislative, and judicial powers of the Philippine Government are distributed, respectively, among the executive, legislative, and judicial branches, severally exercising the functions and powers conferred on them by law."

Each department of the government has an exclusive field within which it can perform its part within certain discretionary limits. No other department can claim a right to enter these discretionary limits and assume to act there. (*Barcelon vs. Baker and Thompson*, supra; *U. S. vs. Bull*, supra; *Forbes vs. Chuoco Tiaco and Crossfield*, 16 Phil., 534; *Borromeo vs. Mariano*, 41 Phil., 322; *Severino vs. Governor-General and Provincial Board of Occidental Negros*, 16 Phil., 366; *Province of Tarlac vs. Gale*, 26 Phil., 388.)

In the case of *United States vs. Ang Tang Ho* (43 Phil., 1) this court said that the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law. Subject to the constitution only, the power of each branch is supreme within its own jurisdiction, and it is for the judiciary only to say when an act of the legislature is or is not constitutional. It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local

laws which conform to the Organic Law. (Alejandrino vs. Quezon, 46 Phil., 83, 96.)

It is not within the power of the Philippine Legislature to enact laws which either expressly or impliedly diminish the authority conferred by an Act of Congress on the Chief Executive. (Concepcion vs. Paredes, 42 Phil., 599.) From all of the foregoing, the conclusion is inevitable, that if any given act of the Philippine Legislature does not, by its nature, pertain to the law-making function, but is either executive or judicial in character, and does not fall within any of the express exceptions established by the Organic Act, such an act is ultra vires and therefore null and void. (See, for a discussion of the powers of the executive department of the Government, the opinion by the late Chief Justice Cayetano S. Arellano in the case of *In re Patterson*, 1 Phil., 93.)

POWERS OF THE LEGISLATIVE DEPARTMENT OF GOVERNMENTS UNDER THE AMERICAN FLAG

Some one has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments of the same are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are expressly given and such other powers as are necessarily implied from the given powers.

The constitution is the shore of legislative authority against which the waves of legislative enactment may dash, but over which they cannot leap.

Mr. Justice Cooley, one of the greatest expounders of constitutional law, said: "The legislative power, we understand, to be the authority, under the constitution, to make laws 'and to alter and repeal them."

Mr. Biddel, an eminent lawyer, said: "The legislature has no other duty nor power than to make laws. After a law has been enacted, that department has no further power over the subject except to amend or repeal it. It can neither adjudge the law nor execute it. All power of that department is ended."

Mr. James Wilson, who was a member of the convention which adopted the Constitution of the United States, and later one of the first members of the Supreme Court of the United States, and one of the very ablest of the members of that great body, in discussing the question of the powers of the legislative department of the government, said, quoting from an able English statesman: "England can never be ruined but by a Parliament (legislative department), which demonstrates the danger of allowing to the legislative department any other (power) than strictly legislative powers."

Even the Justices of the Supreme Court joined in a letter addressed to President Washington upon the general subject of the separation of the departments of government, and insisted upon a scrupulous and undeviated maintenance of the separation of the departments.

Mr. Thomas Jefferson, James Madison, and Alexander Hamilton, who were among the great expounders of the Constitution, wrote earnestly upon the question of the separation of the departments of government, and, with many others, united in protesting against tolerating the claim of the legislative department to exercise any other than purely legislative power.

It has been said in many of the leading cases decided by the highest courts of record that "the power of the legislature is the power to legislate only and to make such investigations as are necessary for that purpose."

Under a constitutional form of government it is believed that all will agree that the concentration of power in the legislative department of government or in any one of the other departments will inevitably result in despotism. Mr. Bryce, who for many years was a close student of the system of government under the American flag, said: "A legislature is a legislature and nothing more." Mr. Woodrow Wilson, in discussing the powers of the executive

and legislative departments of government, said: "The power of the legislative department is to enact laws, while it is the duty of the President to see that the laws of Congress are faithfully executed."

A careful reading of the debates, in the Constitutional Convention, by the greatest statesmen and diplomats at that time shows clearly that one of their greatest concerns was the limitation upon the powers of the executive and legislative departments. A reading of the Constitution itself adopted after a long discussion shows clearly that its members intended to expressly limit the powers of said departments. In the enumeration of the powers of the three departments the phrase that each "shall" or "shall not" do a particular thing is frequently found. No general unlimited power is found. Experience had shown that there was need of curbing the legislative body in order to prevent a violation of the citizens' right of liberty and property. The members of the Constitutional Convention made an effort to strike at the very root of the evils which the people of the state had suffered by the madness of a sovereign legislative body.

James Madison, a member of the Convention, and later President of the United States, said: "Experience had proved a tendency in our governments (state governments) to throw all power into the legislative vortex. The executives of the states are, in general, little more than ciphers; the legislature, omnipotent. If no effectual check be devised in restraining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable."

Gouverneur Morris, one of the great statesmen of his time, said that "he concurred in thinking the public liberty in greater danger from legislative usurpation than from any other source." (July 21, 1787.)

James Madison, in September, 1787, in speaking of the encroachments of the legislative department, said: "The experience of the states had demonstrated that their checks : are insufficient. The legislative department is everywhere : extending the spheres of its activity and draining all power into its impetuous vortex. I have appealed to experience for the truth of what I advance on this subject."

Mr. James Wilson, a member of the Constitutional Convention and one of the first members of the Supreme Court of the United States, said on the 16th day of June, 1787:

"If the legislative authority be not restrained there can be neither liberty nor stability."

The great statesmen who were among the members of the Constitutional Convention were as solicitous about the limitations of the executive department of the government, as they were concerning the limitations of the legislative department. They were exceedingly cautious in defining the powers of each of said departments, and so far as their knowledge and experience aided them their work was complete,

POWERS OF THE PHILIPPINE LEGISLATURE, GRANTED BY THE PHILIPPINE CHARTER

Turning to the Act of Congress of August 29, 1916, commonly known as the "Jones Law," for the purpose of ascertaining what power or authority to legislate was granted to the Philippine Legislature, we find that, while the legislature was given "general legislative power" (secs. 7, 8, 12), "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which reserves the power and authority to annul the same." Not only must all laws enacted by the Philippine Legislature be reported to Congress for approval but certain laws, in addition to the requirement that they must be submitted to Congress, must be submitted to the President of the United States for approval (secs. 9, 10, and 19). In other words, no act of the Philippine Legislature can have the force and effect of a law until it has been either expressly or tacitly approved either by the Congress of the United States or by the President. Neither will it be contended that the express or tacit approval by the Congress of the United States or by the President, of a law otherwise illegal and void, will render such law valid if, in fact, it was adopted without power or authority.

THE AUTHORITY OF THE PHILIPPINE LEGISLATURE TO ENACT LAWS IS WHOLLY A DELEGATED AUTHORITY

The only legislative authority possessed by the Philippine Legislature is a delegated authority. The only power or authority to legislate is granted by the Congress of the United States by the charter (Jones Law; Act of July 2, 1902). To ascertain the power of the Philippine Legislature, therefore, an examination of its charter must be made.

It is argued that when" either the President or the Congress of the United States gives express or tacit approval to an Act of the Philippine Legislature, that such an act thereby becomes a valid subsisting law. That argument is tenable, except when such act is beyond the powers granted to the Legislature. The approval by the President or Congress of an act of the Philippine Legislature does not render such an act legal if, in fact, the same is beyond the powers of the Legislature or contrary to the fundamental law of the land. If the provisions of the act extend beyond the powers of the Legislature, then certainly it cannot be contended that the same is a valid and legal act even though the same has been expressly or tacitly approved by the President or Congress, unless the same can be considered an act of the Congress of the United States and then only, when the same is within the power and authority of Congress. Such act of the Philippine Legislature, even with such approval, can be no more valid and legal than if the Congress of the United States itself had adopted a law which was beyond its power. The legality of such act, notwithstanding the approval, may be decided in a proper proceeding for the purpose of determining whether its provisions are beyond the powers of the legislative department of the government.

The general legislative powers granted to the Philippine Legislature are found in sections 6, 7, 8, and 12 of the Act of August 29, 1916, and those provisions of the Act of July 2, 1902, which have not been repealed. Section 6 provides that the laws now in force in the Philippines shall continue in force, except as altered, amended or modified herein, until altered, amended or repealed by the legislative authority herein provided by the Act of Congress.

Section 7 provides that the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment, to amend, alter, modify or repeal any law, civil or criminal, continued in force by this Act, as it may from time to time see fit.

Section 8 provides that general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act. Section 12, among other things, provides that general legislative power in the Philippines, except as herein otherwise provided, shall be vested in the Legislature, which shall consist of two houses, one the Senate and the other, the House of Representatives, and the two houses shall be designated "the Philippine Legislature."

From a reading of said sections 6, 7, 8, and 12 we have some difficulty in determining why it was necessary to repeat practically the same idea concerning the legislative authority in said sections. The provisions of sections 6, 7, and 12 add nothing to the provisions of section 8 which granted general legislative power to the Philippine Legislature.

We have read said Act of Congress of August 29, 1916, in vain, to find the slightest reference to the power of the Philippine Legislature to participate in the slightest degree, by legislation or otherwise, in the execution of its laws even after they have been approved expressly or tacitly by the President or Congress, unless such power is found in that provision of the law, and then only in the Philippine Senate, which gives that branch of the Legislature the right to participate, with" its advice and consent, in the appointment of certain officers of the Government. But even that provision can scarcely be construed to mean that the Senate can participate in the execution of the laws.

THE ONLY SOVEREIGN IN THE PHILIPPINE ISLANDS IS THE SOVEREIGNTY OF THE UNITED STATES

The people of the Philippine Islands exercise in all matters of government a delegated authority. The executive, the legislative, and the judicial departments of the Government are merely exercising a delegated authority. These departments, unlike the departments of Government in the United States under the Constitution, have received no authority from the people of the Philippine Islands. In the absence of Congressional authority, these departments have no authority or power. They are each creatures of the Congress of the United States. Like all agents, they must act within the authority given. The title of acts of the Philippine Legislature, by which it assumes to enact laws "by its own authority" is an assumption of authority not possessed in fact nor in law. It acts by authority of the Congress of the United States and in the enactment of laws that authority should be recognized.

RIGHT OF PHILIPPINE LEGISLATURE TO APPOINT COMMITTEES TO MAKE INVESTIGATIONS IN ORDER TO ENACT WISE LEGISLATION.

In addition to the power to enact laws, the Philippine Legislature has the inherent power on its own account, or through committees appointed by it, to inquire into the general condition of the government, the administration of governmental affairs and the general welfare of the people, to obtain information to aid it in adopting wise legislation. When such investigation is terminated and laws are adopted, then the authority of the legislature is ended and the execution of such laws is turned over to the Executive Department of the Government.

THE POWER AND AUTHORITY OF THE EXECUTIVE UNDER THE CHARTER OF THE PHILIPPINE GOVERNMENT

From a further examination of the Act of Congress of August 29, 1916, in relation with the Act of Congress of July 2, 1902, We find a depository of power and authority created for the express purpose of executing the laws of the Philippines. Section 21 of said Act (August 29, 1916) provides "that the supreme executive power shall be vested in an executive officer whose official title shall be the Governor-General of the Philippine Islands." It occurs to us that when the Congress of the United States used the words "supreme executive power" that the phrase was used after a careful consideration of its meaning. It was not a haphazard use of the term. The use of that phrase was carefully considered by the Congress of the United States when the Jones Bill was under consideration. In addition to the enumerated powers conferred upon the "supreme executive power," we find that he is held responsible for the faithful execution of the laws of the Philippine Islands." The language of section 22 is "he shall be responsible for the faithful execution of the laws of the Philippine Islands."

There is nothing in any of the provisions of the Jones Law which authorizes or permits the "supreme executive power" to divide its responsibility for the faithful execution of the laws of the Philippine Islands with any other department, legislative or judicial, or with any of the bureaus of the Government. All executive functions of the Philippine Government are expressly under the direction and control of the Governor-General.

Outside of the provisions for the internal regulation and control of the affairs of the legislature, its rules and regulations in its relation with the confirmation of certain appointees by the Governor-General, there is not a syllable, a word, a phrase, a line, nor a paragraph in the Jones Law which permits the legislature to participate in the execution of its general, or special laws.

It is a fundamental maxim of political science, recognized and carried into effect in the Federal Constitution and the constitutions of all the states of the Union, that good government and the protection of rights require that the legislative, executive, and the judicial powers should not be confided to the same person or body, but should be apportioned to separate and mutually independent departments of the government. (Black's Constitutional Law, p. 83.)

The idea of an apportionment of the powers of government, and of their separation into three coordinate departments is not a modern invention of political science. It was suggested by Aristotle in his treatise on

"Politics." and was not unfamiliar to the more advanced of the medieval jurists. But the importance of this division of powers, with the principle of classification, were never fully apprehended, in theory, until Montesquieu gave to the world his great work "Spirit of the Laws." Since then his analysis of the various powers of the state has formed part of the accepted political doctrine of the civilized world.

All American constitutions, state and Federal, provide for the separation of the three great powers of government, and their apportionment to distinct and independent departments of government.

The principle of the separation of the three departments of the government imposes upon each the limitation that it must not usurp the powers nor encroach upon the jurisdiction of either of the others.

The people of the United States ordained in their constitution that "all legislative powers herein granted shall be vested in a Congress of the United States," The people also declared that "the executive power shall be vested in a President" and that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish." It is made clear therefore that the power to legislate is given to the Congress and that the President and the courts are prohibited from making laws. The legislature cannot lawfully usurp any of the functions granted by the Constitution to the executive department. The true meaning of the constitutional division of governmental powers is simply that the whole power of one of the three departments of government shall not be exercised by the same hand which possesses the whole power of either of the other departments.

Mr. Baker, who was Secretary of War of the United States at the time the Jones Law was adopted, and who perhaps was more familiar with its meaning and purpose than any other one person, wrote a letter to Governor-General Harrison, in which he said in general terms that "it would seem to be the part of wisdom for the President and the Governor-General to admit of no encroachment on those powers placed in their hands."

Energy and constancy in the executive department of the government is a leading element in the definition of good government. They are essential to the protection of the people of the state against foreign attack; they are not less essential to the steady administration of the law; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice and administration of the law; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. A feeble executive in the administration of his department implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. Delay in the administration of the laws will lead to injustice, dissensions, turmoils, and disorder.

While the legislature has authority to adopt laws and the courts are possessed with power to construe them, yet finally in its largest sense, the administration of a government and the execution of the laws so adopted and construed is finally left in the hands of the executive department of the government.

FORMS OF GOVERNMENT WHICH HAVE EXISTED IN THE PHILIPPINE ISLANDS SINCE AMERICAN OCCUPATION

Since the 13th day of August, 1898, there have existed in the Philippines several distinct forms of Government. First. A Military Government.—From the 13th day of August, 1898, until the 1st day of September, 1900, there existed a Military Government in the Philippine Islands under the authority of the President of the United States. That Government exercised all of the powers of government, including executive, legislative, and judicial.

Second. Divided Military and Civil Government.—From the 1st day of September, 1900, to July 4, 1901, the legislative department of the Government was transferred from the Military Governor to the United States

Philippine Commission, to be thereafter exercised by said Commission in the place and stead of the Military Government, under such rules and regulations as the Secretary of War might prescribe, until the establishment of the Civil Central Government for the Islands, or until Congress should otherwise provide. During that period the executive authority was Vested in the Military Governor while the legislative authority was vested in the Philippine Commission. (See Instructions of the President of the United States to the United States Philippine Commission, April 7, 1900.) On the 4th day of July, 1901, the executive power theretofore possessed by the Military Governor was transferred to the President of the United States Philippine Commission. Third. Civil Government.—From the 4th day of July, 1901, to the 16th day of October, 1907, the executive and legislative powers of the Philippine Government were possessed by the United States Philippine Commission. The President of the Commission not only possessed and exercised the executive power of the Government but sat as a member of the United States Philippine Commission as a member of the legislative department of the Government.

Fourth. Legislative Department of the Government Divided into Two Branches.—On the 16th day of October, 1907, the Legislative Department of the Government was divided into two branches—the United States Philippine Commission, and the Philippine Assembly—which form continued up to the 16th day of October, 1916. The Governor-General during that period not only possessed the executive powers of the Government, but acted as a member of the branch of the legislative department, known as the United States Philippine Commission.

Fifth. Legislative Department of the Government Separated from the Executive Department.—From the 16th day of October, 1916, until the present time, by virtue of the provisions of the Jones Law, the executive and legislative departments of the Government have been separated, each constituting a separate and distinct department of government; the first, represented by the Governor-General and the second, by the Philippine Legislature.

In each of the separate forms of government above mentioned there existed the executive, legislative and judicial powers fully established and recognized by the only authority for the existence of said Government,— the Government of the United States.

DUTY OF THE GOVERNOR-GENERAL OF THE PHILIPPINES WHEN ADVISED OF ILLEGALITY OF A LAW—HE MAY DISREGARD IT OR FORMULATE A PROPER ISSUE TO BE PRESENTED TO THE COURT CONCERNING ITS LEGALITY.

It is the sworn duty of the Governor-General of the Philippines to execute the laws. That duty, however, does not require him to execute an illegal act of the Legislature.

When he is advised by his legal department that a certain act, or any part thereof, of the Legislature is illegal and void, he may do one of two things: (a) He may disregard it and refuse to execute it, or (b) he may formulate an issue upon the alleged illegality and have that question presented to the courts for solution. He is acting within his powers whichever of these courses he elects to take. To disregard an illegal and void act of the Legislature is neither tyranny nor a violation of his sworn duty. It would be a violation of his sworn duty to enforce or permit the enforcement of an illegal act.

RIGHT OF DIFFERENT DEPARTMENTS TO CONSTRUE POWERS GRANTED UNDER THE CONSTITUTION OR CHARTER

While in many jurisdictions a provision exists by virtue of which the executive and legislative departments may, in case of doubt as to their powers, refer the question to the courts for decision, no such provision exists in the Philippines. In the absence of such provision it becomes necessary therefore in the first instance, when a duty is to be performed, for said departments to pass upon the question of their power to act. Every department of government invested with constitutional or charter powers must, in many instances, be the judge of their powers, or they could not act. Such interpretation of their powers is not exclusive. The parties aggrieved may resort to the

courts for a judicial interpretation. (Cooley's Constitutional Limitations, 73.)

EXCLUSIVE DUTY OF THE GOVERNOR-GENERAL TO PROTECT THE PROPERTY OF THE GOVERNMENT

It is the duty of the Governor-General, as the supreme executive power, to protect the property of the Government. If he, by negligence or inattention to that responsibility, permits the property of the Government to be wasted, destroyed or lost, he subjects himself to the danger of impeachment. His responsibility is then one of great seriousness. He should not supinely disregard it. While the legislative department of the Government may adopt laws for safe-guarding and protecting the property, public and private, it cannot intervene in the enforcement of such law. The legislative department would thereby be taking part, not only in the enactment of laws but in the execution of the same, which is not permitted under the American Constitution and system of laws.

WHAT HAS BEEN DONE BY LEGISLATIVE DEPARTMENT FURNISHES NO CRITERION AS TO REAL POWERS

In support of the contention that the President of the Senate and the Speaker of the House of Representatives, under Act No. 2705 as amended by Act No. 2822, have a right to intervene in the execution of said laws, our attention is called to many acts of legislative bodies, where such bodies have not only enacted laws but have made provisions in the same, by which they have intervened in their execution. The cited cases support the allegations of the respondents. Our attention is called especially to Acts Nos. 69, 1415, 1841, 1849, 1870, 1981, 2023, 2479, 2510, 2598, 2957 and 3208 as well as to many acts of the legislatures of different states of the Union. It is true that in each of the various acts cited, of the Philippine Legislature, a provision is made for the appointment of certain persons to assist in their execution.

No question has ever been raised concerning the powers of the Legislature in respect of said acts. The mere fact, however, that the legality of said acts has never been questioned and their legality has been passed sub silentio, does not create a conclusive presumption that they were in fact adopted within the powers of the legislative department of the Government. The fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity where the question is properly raised and presented. (*McGirr vs. Hamilton and Abreu*, 30 Phil., 563, and cases cited.)

LEGALITY OF THAT PROVISION OF ACT NO. 2705, AS AMENDED BY ACT NO. 2822, CREATING THE "VOTING COMMITTEE"

In addition to the contention that the Legislature, by virtue of the provisions of Acts Nos. 2705 and 2822, not only attempted to legislate but to participate in the execution of its laws, there is still another objection to the legality of that provision of said acts which creates the "Voting Committee." One of the inhibitions against the powers of the Philippine Legislature is found in one of the subparagraphs of section 3 of the Jones Law. Said subparagraph provides: "That no bill (public or private) which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill." The title of Act No. 2705 reads: "An Act to create the National Coal Company." The title of Act No. 2822 is: "An Act to amend Certain Sections of Act No. 2705, Entitled 'An Act to create the National Coal Company.'" Act No. 2822 does not amend that provision of Act No. 2705 relating to the "Voting Committee." The inhibition, therefore, of the Jones Law need not be discussed with reference to the provisions of Act No. 2822.

Many of the states of the Union have adopted similar constitutional provisions. The purpose of this legislative restriction and the evils sought to be remedied thereby are clearly stated by Mr. Sutherland, now an Associate

Justice of the Supreme Court of the United States, in his valuable work on Statutory Construction. In section 111 he says that:

"In the construction and application of this constitutional restriction the courts have kept steadily in view the correction of the mischief against which it was aimed. The object is to prevent the practice, which was common in all legislative bodies where no such restriction existed, of embracing in the same bill incongruous matters having no relation to each other, or to the subject specified in the title, by which measures were often adopted without attracting attention. Such distinct subjects represented diverse interests, and were combined in order to unite the members of the legislature who favor either in support of all. These combinations were corruptive of the legislature and dangerous to the State. Such omnibus bills sometimes included more than a hundred sections on as many different subjects, with a title appropriate to the first section, 'and for other purposes.'

"The failure to indicate in the title of the bill the object intended to be accomplished by the legislation often resulted in members voting ignorantly for measures which they would not knowingly have approved. And not only were legislators thus misled, but the public also; so that legislative provisions were stealthily pushed through in the closing hours of a session, which, having no merit to commend them, would have been made odious by popular discussion and remonstrance if their pendency had been reasonably announced. The constitutional clause under discussion is intended to correct these evils; to prevent such corrupting aggregations of incongruous measures by confining each act to one subject or object; to prevent surprise and inadvertence by requiring that subject or object to be expressed in the title."

In the case of *Walker vs. State* (49 Ala., 329), the Supreme Court of Alabama stated the proposition as follows—citing and quoting from *Cooley's Constitutional Limitations*, p. 143:

"The object sought to be accomplished and the mischief proposed to be remedied by this provision are well known. Legislative assemblies for the dispatch of business often pass bills by their titles only, without requiring them to be read. A specious title sometimes covered legislation which, if its real character had been disclosed, would not have commanded assent. To prevent surprise and fraud on the legislature is one of the purposes this provision was intended to accomplish. Before the adoption of this provision, the title of a statute was often no indication of its subject or contents.

"An evil this constitutional requirement was intended to correct was the blending in one and the same statute of such things as were diverse in their nature, and were connected only to combine in favor of all the advocates of each, thus often securing the passage of several measures, no one of which could have succeeded on its own merits. Mr. Cooley thus sums up his review of the authorities defining the objects of this provision: 'It may, therefore, be assumed as settled, that the purpose of this provision was: First, to prevent hodge-podge, or log-rolling legislation; second, to prevent surprise or fraud upon the legislature, by means of provisions in bills of which the titles gave no information, and which might therefore be overlooked and carelessly and unintentionally adopted; and, third, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they shall so desire.' "

"The practice," says the Supreme Court of Missouri, "of comprising in one bill subjects of a diverse and antagonistic nature, in order to combine in its support members who were in favor of particular measures, but neither of which measures could command the requisite majority on, its own merits, was found to be not only a corrupting influence in the Legislature itself, but destructive of the best interests of the State. But this was not more detrimental than that other pernicious practice by which, though dexterous and unscrupulous management, designing men inserted clauses in the bodies of bills, of the true meaning of, which the titles gave no indication,

and by skillful maneuvering urged them on to their passage. These things led to fraud, surprise, and injury, and it was found necessary to apply a corrective in the shape of a constitutional provision." (City of St. Louis vs. Tiefel, 42 Mo., 578, 590.)

The authorities are to all intents uniform that this constitutional requirement is mandatory and not directory. Sutherland on Statutory Construction, section 112, states the rule correctly as follows:

"The efficiency of this constitutional remedy to cure the evil and mischief which has been pointed out, depends on judicial enforcement; on this constitutional injunction being regarded as mandatory, and compliance with it essential to the validity of legislation. The mischief existed notwithstanding the sworn official obligation of legislators; it might be expected to continue notwithstanding that that obligation is formulated and emphasized in this constitutional injunction, if it be construed as addressed exclusively to them, and only directory. It would, in a general sense, be a dangerous doctrine to announce that any of the provisions of the constitution may be obeyed or disregarded at the mere will or pleasure of the legislature, unless it is clear beyond all question that such was the intention of the framers of that instrument. It would seem to be a lowering of the proper dignity of the fundamental law to say that it descends to prescribing rules of order in unessential matters which may be followed or disregarded at pleasure. The fact is this: That whatever constitutional provision can be looked upon as directory merely is very likely to be treated by the legislature as if it was devoid of moral obligation, and to be therefore habitually disregarded."

In the case of Walker vs. State, supra, the court said:

"It is the settled law of this court, founded on reasoning which seems to us unanswerable, that this provision of the constitution is not a mere rule of legislative procedure, directory to the general assembly, but that it is mandatory, and it is the duty of courts to declare void any statute not conforming to it."

Justice Cooley, in his work on Constitutional Limitations (pp. 179, 180) states that our courts have held, without exception, that such constitutional provision is mandatory. (Central Capiz vs. Ramirez, 40 Phil., 883.)

Inasmuch as the body of said Act contains a provision to which no reference is made in the title, in view of the well established authorities, we are forced to the conclusion that, that provision creating the "Voting Committee" is illegal. That illegality, however, is one which may be separated from the rest of the act without affecting the legality of the other provisions.

THE "VOTING COMMITTEE" AS PUBLIC OFFICERS OF THE GOVERNMENT

It is argued most earnestly by the petitioner, and denied with equal earnestness by the respondents, that the President of the Senate and the Speaker of the House of Representatives, acting as members of the "Voting Committee" in participating in voting the stock of the National Coal Company, were acting as public officials of the government and that the legislature is without authority to appoint public officials for that purpose or to appoint public officials at all for any purpose. It is admitted by both parties that the National Coal Company is a private corporation. It is admitted that the Government of the Philippine Islands is a stockholder. The law provides that the Governor-General, the President of the Senate, and the Speaker of the House of Representatives at a stockholders' meeting shall act as a committee for the purpose of voting said stock. Does that fact make the President of the Senate and the Speaker of the House of Representatives public officials? In the voting of the stock do they stand in any different relation to the Government and the National Coal Company than any other holders of stock? Are they not governed by the same laws, and-by-laws of the corporation like other stockholders?

Mr. Justice Marshall, in the case of the Bank of the United States vs. Planters' Bank of Georgia (22 U. S., 904 [Feb. 18, 1824]), in discussing the question of the relation of the Government to private corporations when it

becomes a stockholder in a private corporation, said, among other things: "It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company (or corporation) its privileges and its (sovereign) prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted * * *. As a member of a corporation, a Government never exercises its sovereignty. It acts merely as a corporator, and exercises no other powers in the management of the affairs of the corporation, than are expressly given by the incorporating act. The Government of the Union held shares in the old Bank of the United States; but the privileges of the Government were not imparted by that circumstance to the bank. The State of Georgia, by giving to the bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character."

The doctrine announced by Chief Justice Marshall in that case has been followed without modification not only by the courts but by all of the eminent authors who have written upon that particular question. (Thompson on Corporations, vol. 1, sec. 167; Bank of Kentucky vs. Wister, 27 U. S., 318, 322; Briscoe vs. Bank of Kentucky, 36 U. S., 256, 324; Louisville Railway Co. vs. Letson, 43 U. S., 497, 550; Curran vs. State of Arkansas, 56 U. S., 302; Veazie Bank vs. Fenno, 75 U. S., 533; Railroad Co. vs. Commissioners, 103 U. S., 1, 5; Hopkins vs. Clemson College, 221 U. S., 636, 644; Putnam vs. Ruch, 56 Fed., 416; Western Union Tel. Co. vs. Henderson, 68 Fed., 591; U. S. vs. Chesapeake & D. Canal Co., 206 Fed., 964; Encyclopedia of the U. S. Supreme Court Rep., vol. 11, p. 225; Encyclopedia of the U. S. Supreme Court Rep., vol. 3, p. 124; Encyclopedia of the U. S. Supreme Court Rep., vol. 4, p. 643.)

The petitioner as well as the respondents cite many cases in support of their respective contentions. The petitioner cites the following cases:

Pratt vs. Breckinridge (112 Ky., 1); State vs. Brill (100 Minn., 499) ; State vs. Denny (118 Ind., 382; 4 h. R. A., 79); State vs. Washburn (167 Mo., 680); State vs. Stanley (66 N. C., 60); Welker vs. Bledsoe (68 N. C., 457); Howerton vs. Tate (68 N. C., 546); Myers vs. United States (272 U. S., 52; 71 Law. ed., 160) ; Concepcion vs. Paredes (42 Phil., 599).

Cases cited by respondents:

The Smithsonian Institution; Mechem's Public Officers, §c. 1; Olmstead vs. (Mayor (42 N. Y. Sup. Ct., 481); United States vs. Germaine (99 U. S., 508) ; McArthur vs. Nelson (81 Ky., 67); Congressional Reports, vol. II; State vs. Kennon (7 Ohio State, 562).

See also:

Walker vs. City of Cincinnati (21 Ohio State, 14; 8 Am. Rep., 24); State vs. Hocker (39 Fla., 477; 63 Am. St. Rep., 174); Butler vs. Walker (98 Ala., 358).

After a careful analysis of all of the authorities cited, it is difficult to conclude just what is the weight of authority, in view of the decision of Chief Justice Marshall quoted above. If the Government acts merely as one of the corporators of the National Coal Company and exercises no other power in the management of the affairs of the corporation than the one expressly given by the Incorporatory Act, it is difficult to understand how the "Voting Committee" is acting as a public officer. It was not the intention of the Legislature to make the President and Speaker officers of the Government. The Legislature simply intended to add additional duties to said officers. But after all, in our opinion, the fact that the Legislature enacted the law and at the same time provided that, through the President and Speaker, it (the Legislature) should assist in the execution of the same, is sufficient to nullify

that provision. It is a matter of no importance in what capacity they acted. The Legislature had no authority to take part in the execution of the particular law.

THE RIGHT OF THE COURT TO DECIDE THE QUESTION, WHAT ARE THE RESPECTIVE POWERS OF THE DIFFERENT DEPARTMENTS OF GOVERNMENT.

It is conceded by all of the eminent authorities upon constitutional law that the courts have authority to finally determine what are the respective powers of the different departments of government.

"The question, of the validity of every statute is first determined by the legislative department of the Government, and the courts will resolve every presumption in favor of its validity. Courts are not justified in adjudging a statute invalid in the face of the conclusions of the legislature, when the question of its validity is at all doubtful. The courts will assume that the validity of a statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the state. The wisdom or advisability of a particular statute is not a question for the courts to determine. If a particular statute is within the constitutional power of the legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment. If the statute covers subjects not authorized by the fundamental laws of the land, or by the constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or beneficent such legislation may seem to be. Courts are not justified in measuring their opinions with the opinion of the legislative department of the Government, as expressed in statutes, upon questions of the wisdom, justice and advisability of a particular law. In exercising the high authority conferred upon the courts to pronounce valid or invalid a particular statute, they are only the administrators of the public will, as expressed in the fundamental law of the land. If an act of the legislature is to be held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental law of the land and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed, even by the legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force, and application of the fundamental law of the state." (Case vs. Board of Health and Heiser, 24 Phil., 250, 251.)

The judicial department of the Government may examine every law enacted by the legislative branch of the Government when the question is properly presented for the purpose of ascertaining:

- (a) Whether or not such law came within the subject-matter upon which the legislative branch of the Government might legislate; and
- (b) Whether the provisions of such law were in harmony with the authority given the legislature.

If the judicial branch of the Government finds (a) that the legislative or executive branches of the Government had authority to act upon the particular subject, and (b) that the particular law contained no provisions in excess of the powers of such department and the acts of the executive were within his powers, then that investigation, or that conclusion, conclusively terminates the investigation by the judicial department of the Government.

SOLICITUDE OF THE GOVERNMENT OF THE UNITED STATES AND ITS REPRESENTATIVES IN THE PHILIPPINE ISLANDS FOR THE WELFARE AND WELL BEING OF THE INHABITANTS.

No Government, past or present, has more carefully and watchfully guarded and protected, by law, the individual rights of life and property of the citizens of the Philippine Islands than the Government of the United States and its representatives. Each of the three departments of the Government has had separate and distinct functions to perform in this great labor. The history of the Philippine Islands, covering a period of more than a quarter of a century, discloses the fact that each department has performed its part well. No one department of the

Government can or ever has claimed, within its discretionary and legal powers, a greater zeal than the others in its desire to promote the welfare of the individual citizen. They are all joined together in their respective spheres and departments, harmoniously working to maintain good government, peace, and order to the end that the rights of each citizen in his life and property be equally protected. No one department can claim that it has a monopoly of these benign purposes of the Government. Each department has an exclusive field, under the law, within which it can perform its part, within certain discretionary limits. No other department can claim a right to enter these discretionary and legal limits and assume to act there. No presumption of an abuse of these discretionary powers by one department will be considered, permitted or entertained by another. Such conduct on the part of one department, instead of tending to conserve good government and the rights of the people, would directly tend to destroy the confidence of the people in the Government and to undermine the very foundations of the Government itself.

CONCLUSIONS

For all of the foregoing reasons the petition for the extra-ordinary legal writ of quo warranto should be granted, and that Milton E. Springer, Dalmacio Costas, and Anselmo Hilario are each illegally and unlawfully occupying the position of members of the Board of Directors of the National Coal Company, and should be ousted and altogether excluded therefrom; that Romarico Agcaoili, H. L. Health, and Salvador Lagdameo have been duly and legally elected as members of the Board of Directors of the National Coal Company, and judgment is rendered that they be immediately inducted into said position, to take charge thereof and to perform the duties incumbent upon them as members of the Board of Directors. The demurrer is overruled. Considering the petition and demurrer in relation with the stipulated facts, there seems to be no reason for permitting an answer to be filed. And without any finding as to costs, it is so ordered.

DISSENTING:

AVANCEÑA, C. J., VILLAMOR, and VILLA-REAL, JJ.,

Much to our regret we have to dissent from the majority whose opinion has always commanded our respect.

In the case of National Coal Company vs. Collector of Internal Revenue (46 Phil., 583), this court said:

"The National Coal Company, a Private Corporation; SUBJECT TO THE PAYMENT OF INTERNAL REVENUE UNDER THE PROVISIONS OF SECTION 1496 OF THE ADMINISTRATIVE Code.—The National Coal Company is a private corporation. The fact that the Government happens to be a stockholder therein does not make it a public corporation. It is subject to all the provisions of the Corporation Law in so far as they are not inconsistent with Act No. 2705. As a private corporation, it has no greater powers, rights, or privileges than any other corporation which might be organized for the same purpose under the Corporation Law. It was not the intention of the Legislature to give it a preference, or right, or privilege over other legitimate private corporations in the mining of coal. The law made no provision for its occupation and operation of coal-bearing lands, to the exclusion of other persons or corporations, under proper permission. The National Coal Company being a private corporation, neither the lessee nor the owner of the lands upon which it mined coal for the year in question, is subject to the payment of the internal revenue duty provided for in section 1496 of the Administrative Code."

The National Coal Company, having been created and established by the Philippine Legislature for the purpose of developing the coal industry in the Philippine Islands, in harmony with the general plan of the Government to encourage the development of the natural resources of the country, what relation does it bear with said Government? Is it an agency or instrumentality thereof empowered to perform some government act or function for governmental purposes?

Agency or instrumentality is denoted to be a means by which a certain act is done (2 C. J., 420; 32 C. J., 947). So governmental agency or instrumentality may be denoted as a means by which a government acts, or by which a certain governmental act or function is performed. A governmental act is a term sometimes used to describe an act done in pursuance of some duty imposed by the state on a person, individual or corporate, which duty is one pertaining to the administration of government and as an absolute obligation on a person who receives no profit or advantage peculiar to himself for its execution (28 C. J., 753, n. 1). Naturally, when a government acts it does so for purposes of its own. Now, what is the purpose of government? "A government does not exist in a personal sense, or as an entity in any primary sense, for the purpose of acquiring, protecting, and enjoying property. It exists primarily for the protection of the people in their individual rights, and it holds property not primarily for the enjoyment of property accumulations, but as an incident to the purpose for which it exists—that of serving the people and protecting them in their rights." (Curley vs. U. S., 130 Fed., 1, 8; 28 C. J., 750.) "The term governmental purposes, as used in the constitution which provides that public property taken for public purposes is exempt from taxation, means, in its most extensive sense, the punishment for crime, for prevention of a wrong, the enforcement of a private right, or in some manner preventing wrong from being inflicted upon the public or an individual, or redressing some grievance, or in some way enforcing a legal right, or redressing or preventing a public individual injury. (City of Owensboro vs. Com., 105 Ky., 344; 28 C. J., 753, n. 8).

In the light of the above definitions, let us inquire what governmental act or function does the National Coal Company perform, and for what governmental purposes. As was stated by this court in the above cited case, "As a private corporation, it has no greater rights, powers, or privileges than any other corporation which might be organized for the, same purpose under the Corporation Law. It was not the intention of the legislature to give it a preference, or right, or privilege over other legitimate private corporations in the mining of coal. The law made no provision for its occupation and operation of coal-bearing lands to the exclusion of other persons or corporations, under proper permission." It is subject to the payment of internal revenue tax on its coal output. The Philippine Government owns nothing in said corporation except the stock which it has purchased therein. The National Coal Company cannot perform any governmental act, for it has not been authorized to do so. The fact that it has been created and established for the purpose of developing the coal industry in the Philippine Islands, in harmony with the general plan of the Government to encourage the development of the natural resources of the country, and the fact that the Government owns a majority of the stock thereof, are not alone sufficient to give the National Coal Company the distinction of being an agency or instrumentality of said Government, just as the investment of government money in any other corporation of the same nature or in a radio corporation to which it has given a charter for. the purpose of encouraging the development of radio communication in the Islands is not by itself sufficient to make of such a corporation an agency or instrumentality of the Government in the political and administrative sense of the term.

If the National Coal Company is a private corporation, and is not a government agency or instrumentality, what standing has the Government in said corporation by virtue of its ownership of a majority of its stock.

In the case of the Bank of the United States vs. Planters' Bank of Georgia (6 Law. ed., 244), Chief Justice Marshall said:

"It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and 'takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many states of this Union who have an interest in banks, are not suable even in their own courts; yet they never exempt the corporation from being sued. The State of Georgia, by giving to the

bank the capacity to sue and be sued, voluntarily strips itself of its sovereign character, so far as respects the transactions of the bank, and waives all the privileges of that character. As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act." (Bank of the United States vs. Planters' Bank of Georgia [22-25 U. S.], 6 Law. ed., 244.)

In the case of the Bank of Kentucky vs. Wister (7 Law. ed., 323), the court, after citing the above paragraph, added:

"To which it may be added, that if a State did exercise any other power in or over a bank, or impart to it its sovereign attributes, it would be hardly possible to distinguish the issue of the paper of such banks from a direct issue of bills of credit; which violation of the Constitution, no doubt the State here intended to avoid."

The Government of the Philippine Islands, as a stockholder, has a right to participate in the election of the Directors of the National Coal Company by the exercise of its voting power. In so doing it acts merely as a corporator with no other power than are expressly granted by the Corporation Law, and does not exercise its sovereignty. It cannot impose its sovereign will, but it must act according to the by-laws of the corporation. The only control it has is what is given to it by the amount of its stock.

The Government, as stockholder, has a right to appoint or designate a proxy to vote its stock in the National Coal Company, and the Philippine Legislature has done this for it by creating in the same Act a voting committee to be composed exclusively of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. Now the question arises whether or not the position of a proxy of the Government in said corporation is a public office.

"An office is defined by good authority as involving a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public, by which it is distinguished from employment or contract." (Mechem Pub. Off. quoted in Barnhill vs. Thompson, 122 N. C., 403, 405; 29 S. E., 720.) The word "office" mentioned in the constitution means a position having to do with the general government of the State (Walker vs. Cincinnati, 21 Ohio St., 145), and the same meaning must be given to the word "office" mentioned in the Jones Law, which has the character of a constitution.

Does the committee in voting the stock of the Government perform any sovereign function of government?

The Government participates in the management of the affairs of the National Coal Company every time it exercises by proxy the right of voting in the election of its directors, and, according to Chief Justice Marshall, in so doing it acts as a corporator merely and does not exercise any sovereign power. Its proxy, in performing his duty exercises no greater power. And it cannot be otherwise, for we would have the absurd result of an agent exercising a higher power than that of the principal in the fulfilment of the latter's mandate. If the voting of the stock of the Government in the election of the directors of the National Coal Company is the act, not of the Government in its sovereign capacity, but of a corporator merely, the designation of the members of the voting committee by the Government to vote its stock does not involve a delegation of a sovereign function of government, for the function delegated is of a private and not of a public nature.

The case of State vs. Stanley (66 N. C., 59; 8 Am. Rep., 488), cited in the brief for the plaintiff, wherein it was held that membership in a committee, composed of the President of the Senate and the Speaker of the House of Representatives of the State of North Carolina, is an office, is not in point, for said committee was entrusted with the appointment of directors and proxies in all the corporations in which the State was a stockholder; while the committee under consideration has no other power except to vote the stock of the Government in the National

Coal Company. In that case the committee was an appointer of directors and proxies; in this case the committee is a mere proxy.

Is the public directly benefited by the exercise of the delegated power of voting the stock of the Government by the committee? When the committee votes the stock of the Government, as a stockholder, the corporation and its stockholder alone are directly benefited by the act, and the public only indirectly by way of an increased material prosperity. But this is not the kind of benefit that is sought to be obtained by the creation of, a public office. It is the benefit that is deserved from the protection of life, liberty, property, and the pursuit of happiness.

The voting of the stock of the Government which is delegated to the committee, not being a part of the sovereign functions of the said Government, and not being exercised for the direct benefit of the public, membership therein is not a public office.

Let us now examine into the question whether or not the designation of the President of the Senate and the Speaker of the House of Representatives, as ex-officio members of said committee, by section 4 of Act No. 2705, as amended by Act No. 2822, is constitutional, and therefore valid.

If the membership in the voting committee is not a public office, the designation by the Philippine Legislature of its own members as members ex-officio thereof is not in violation of the principle of separation of powers. It will not be denied that the power of appointment to certain offices vested in the Governor-General by the Jones Law refers only to public executive office; that his power of supervision and control is limited to public executive functions, and that the responsibility imposed upon him for the faithful execution of the laws refers only to laws of public nature. Membership in the voting committee, not being a public office, the Governor-General has no power to appoint its members; the voting of the stock of the Government not being a public executive function, he has no supervision and control over it; and the law creating the National Goal Company and designating a voting committee not being a public law, he is not charged with the responsibility of executing it. Therefore, in creating the voting committee and designating the President of the Senate and the Speaker of the House of Representatives as ex-officio members thereof the Philippine Legislature did not encroach upon any of the powers of the Governor-General.

The contention that the Legislature cannot execute its own laws, is contrary to the congressional interpretation expressed on various occasions, specially in the case of "The Smithsonian Institution." In incorporating it, the Congress has provided for its management "by a Board of Regents" named the Regent of the Smithsonian Institution, to be composed of the Vice-President, the Chief Justice of the United States, and three members of the Senate and three members of the House of Representatives; together with six other persons, other than members of the Congress, two of whom shall be resident of the City of Washington; and the other four shall be inhabitants of same State, but no two of them in the same State" (9 Fed. St. An., sec. 588 [a]). The members of the Senate were to be appointed by the President thereof; and the member of the House, by the Speaker thereof. Granting, for the sake of argument, that membership in the voting committee is a public office, does the designation of the President of the Senate and of the Speaker of the House of Representatives as ex-officio members of the said committee an encroachment upon the power of appointment to office vested in the Governor-General.

No challenge seems to have been made to the power of the Philippine Legislature to designate the Governor-General or any other executive officer to serve on said voting committee or any public office, and a challenge of that nature, if made at all, will find no support in the authorities (12 C. J., 837).

What is vigorously attacked is the power of the Legislature to designate any of its members to serve on said voting committee, the contention being that the exercise of such power is a violation of the principle of separation of powers and an encroachment upon the power of appointment to office vested in the Governor-General by the

Jones Law.

"By some authorities the power of appointment to office is regarded as per se an executive function, which, therefore, may not be exercised, vested, or controlled by the legislature except in so far as it is a necessary incident to the exercise of the legislative power or is vested by the constitution in the legislature. By the great weight of authority, however, the power of appointment is held not to be per se an executive function, and unless the appointment of particular officers is, by the constitution, expressly conferred on the executive department or forbidden to the legislature the latter may, by statute, vest the power of appointment in its discretion. The ordinary constitutional distributive clause providing for the complete separation of governmental powers has generally been held insufficient to vest the appointing power solely in the executive. Thus a statute conferring on a circuit judge the power to fill vacancies in a board of park commissioners is valid. So a board of civil service commissioners may be appointed by the legislature for the purpose of prescribing qualifications for officers except such as are otherwise provided for in the constitution." (12 C. J., 836, par. 319, n. 1.)

"A provision of the constitution precluding the legislature from electing or appointing officers does not invalidate an act creating a board or commission[^] of which certain state officers shall be ex-officio members, nor prevent the legislature from imposing new functions on existing officers." (12 C. J., 837, par. 319, n. 5.)

"Under the American system of government the chief executive has no prerogative powers, but is confined to the exercise of those powers conferred upon him by the constitution and statutes." (12 C. J., 898, par. 402; *State vs. Bowden*, 92 S. C., 393; *Richardson vs. Young*, 122 Tenn., 471.)

This must be true of the Governor-General of the Philippine Islands, when section 21 of the Jones Law says in part:

"He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor-General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint."

The enumeration of the instances in which the Governor-General may make appointments, implies that he has not been empowered to make all appointments. The expression "whom he may hereafter be authorized by the law to appoint," implies clearly that there may be certain cases in which he may not be authorized to make appointments.

It is contended that the legislature may make such appointments where the source of power is the people or the constitution made by the people, as the residuum of power is entrusted in the legislature; but that this may not be done in the Philippine Islands where the source of power is the Congress of the United States, and the Philippine Legislature only acts by delegation of said body. The Congress of the United States, after enumerating the powers pertaining to each of the three departments of the Government and declaring which are the functions of each, has reserved to itself the power and authority to annul the laws enacted by the Philippine Legislature, which must be reported to it (Jones Law, sec. 19). If the Congress of the United States had intended to limit the powers of the Philippine Legislature to those enumerated by it in the Organic Act and to those of purely legislative character, it would seem that there would have been no necessity for making such reservation; because all laws passed by the Philippine Legislature which are within its powers will of necessity be valid, and all laws in excess of its powers will be null and void, and the courts will so declare them.

It is only when a residuum of power is left with a legislature which does not owe its powers to the people or to a constitution made by the people, as the Philippine Legislature, that such reservation becomes necessary; for it may exercise a power which the Congress had not intended it should exercise, and which the latter may be powerless to correct, giving room to doubts with no other means of solving them except by judicial decision, which may be

precisely the contrary of what the Congress may have intended. If such reservation of power and authority has any meaning at all, as it must have, it cannot be other than to avoid doubts and uncertainties as to the authority of the legislature to enact certain laws, by permitting those affected by them to determine by the action or inaction of Congress whether or not such power was one of those constituting the residuum.

Furthermore, nothing could have prevented the Congress of the United States from giving to the Philippine Legislature the power of appointment to an office which have not previously been vested expressly in the Governor-General, as nothing had prevented it from placing in the hands of the Philippine Commission not only executive but legislative powers as well. If so, there is nothing that can prevent it from ratifying any law by which executive officers are created and, filled by the legislature with its own members. Ratification may be made either expressly or impliedly. Act No. 2705, as amended by Act No. 2822, having been reported to Congress, the failure of the latter to annul it was equivalent to an implied ratification. In the case of *Fajardo Sugar Co. of Porto Rico vs. Holcomb*, decided on November 23, 1926, the Federal Court of the First Circuit said:

"If, turning from the section specifically dealing with the powers of the auditor, we look more broadly at the structure of the Government of Porto Rico provided under the Organic Act,—we are driven to the same conclusion. Under that Act, the Governor-General, Attorney-General, Commissioner of Education, and Auditor are presidential appointees. The Governor has, in general, the powers of the Governor of one of our states, and, besides, he is required annually to make official report of the transactions of the government of Porto Rico to the executive department of the United States, to be designated by the President, and the said annual report shall be transmitted to the Congress. Moreover, in section 34 (Camp. St., par. 3803 n), it is provided that if, after veto of the Governor, the Legislature shall by a two-thirds vote pass an Act over the veto, the Governor, if he shall not then approve, shall transmit the proposed Act to the President of the United States; that 'if the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor so stating, and it shall not become a law.' It follows that no Act can become a law without the approval of the Porto Rican Governor, a presidential appointee, or the President of the United States. There is also a provision in section 34 that:

" 'All laws enacted by the legislature of Porto Rico shall be reported to the Congress of the United States * * * which hereby reserves the power and authority to annul same."

"if not thus annulled, within reasonable time, there is a presumption that they are approved." (*Tiaeo vs. Forbes*, 228 U. S., 549, 558; 33 S. Ct. 585; 57 Law. ed., 960; *Porto Rico vs. American, etc.*, R. R., 254 F., 369; 165 C. C. A., 589; *Camunas vs. P. R. Ry., etc., Co.* [C. C. A.], 272 F., 924, 931, and cases cited.)

"The result is that all Porto Rican legislation now on the statute books is—in a very real sense, though indirectly—the output of our Federal Government. Under such conditions, the court should not lightly assume that the tax acts of Porto Rico, now contended to be in conflict with section 20 of the Organic Act, are inconsistent and therefore invalid. Doubtless the relation of the Organic Act to the Porto Rican Government is in certain aspects, like the relation of a state Constitution to a state Legislature." (*Camunas vs. P. R. Ry., etc., Co.* [C.;C. A.], 272 F., 924, 928.)

"But the analogy is. not complete; for, after all, the Organic Act is nothing but federal legislation, and Porto Rican legislation, approved expressly or impliedly by Congress, has exactly the same import."

The only prohibition to the appointment of members of the Philippine Legislature to executive public offices is that contained in section 18 of the Jones Law, which says that "No Senator or Representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the Legislature, nor shall be appointed to any office of trust or profit which shall have been created or the emoluments of which shall have been increased during such term." The present Speaker of the House of Representatives is

clearly not within said prohibition, as Act No. 2705 creating said committee was enacted in 1917, before his term of office began in 1922; so the now President of the Senate, for while the said Act was passed during his term of office, that term had already expired in 1922, and he is now serving another term (1922-1928).

Therefore, the Philippine Legislature may not only create the voting committee but designate the President of the Senate and the Speaker of the House of Representatives as ex-officio members of said committee, always granting, for the sake of argument, that membership therein is a public office.

It only remains now for us to dispose of another question, that of the power of the Governor-General to vote the stock of the Government alone, granting again, for the sake of argument, that section 4 of Act No. 2705, as amended by Act No. 2822, is unconstitutional in so [far as it refers to the designation of the President if the Senate and the Speaker of the House of Representatives as ex-officio members of the voting committee.

"The provision in constitutions as to distribution of powers, and as to the executive power of the state being vested in the Governor, is declaratory and does not confer any specific powers" (12 C. J., 898; *Field vs. Peo*, 3 II., 79), The power to vote the stock of the Government is delegated to a committee to be composed exclusively of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives, and the rule is "Where the power is delegated for a mere private purpose, all the persons (if more than one), upon whom the authority is conferred must unite and concur in the exercise. In case of the delegation of a public authority to three or more persons, the authority conferred may be exercised and performed by a majority of the whole member; If the act to be done by virtue of such public authority requires the exercise of discretions and judgment,—in other words, if it is a judicial act,—the persons to whom the authority is delegated must meet and confer together, and be present when the act is performed; or at least a majority must meet, confer, and be present after all have been notified to attend. Where the act is to be done is merely ministerial, a majority must concur and unite in the performance of the act, but they may act separately." (18 C. J., 472, note 3-a; *Perry vs. Tynen*, 22 Barb [N. Y., 137, 140].) Whether we consider the delegation of the power to vote the stock of the Government as for public or private purpose, the Governor-General alone cannot exercise it as the voting requires the exercise of discretion and judgment, and at least a majority must concur after all have been notified.

To recapitulate, we believe that we have demonstrated the following propositions:

1. That the National Coal Company is not an agency or instrumentality of the Government of the Philippine Islands.
2. That the Government of the Philippine Islands, as mere corporator, if it had to vote its own stock would have to do so in the capacity of a private citizen, and not in its sovereign capacity.
3. That the voting committee in exercising the power delegated to it does so in the same capacity as its principal.
4. That the voting of the stock of the Government is a private act, and the committee in doing so performs a private function, and therefore membership therein is a private and not a public office.
5. That membership in the voting committee being a private position and not a public office, the designation by the Philippine Legislature of the President of the Senate and the Speaker of the House of Representatives as exofficio members thereof was not an encroachment upon the power of supervision and control over all executive functions of the Government vested in the Governor-General.
6. That even granting that membership in said committee is a public office, still the Philippine Legislature has the power to designate the President of the Senate and the Speaker of the House of Representatives as ex-officio members of said committee, by virtue of the residuum of power placed in its hands by the Congress of the United

States.

7. That whether we consider the delegation of the voting power as for public or private purposes, the Governor-General alone cannot exercise that power as it requires discretion and judgment, and at least a majority must concur.

8. That, finally, the Congress of the United States by its reserved power and authority to annul any law of the Philippine Legislature, has by its silence impliedly ratified Government of the Philippine Islands vs. Agoncillo

For the foregoing considerations we are of the opinion that the demurrer should be sustained and the complaint be dismissed.

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