

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF, VS.
GREGORIO AGONCILLO, BALDOMERO ROXAS, AND CATALINO
LAVADIA, DEFENDANTS. GERONIMO SANTIAGO ET AL.,
INTERVENORS.**

G.R. No. 27225. April 01, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

These are quo warranto proceedings instituted by the Government of the Philippine Islands against the defendants, to oust them from their offices of directors of the Philippine National Bank, to which they were named by the legislative members of the Board of Control created by Acts Nos. 2747 and 2938. The fundamental legal issue is the validity of the amendments to section 4 of Act No. 2612, made by section 1 of Act No. 2747 and section 1 of Act No. 2938, which provide that "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The facts are stipulated. The Philippine National Bank is a corporation created by Acts of the Philippine Legislature. (Act No. 2612, as amended by Acts Nos. 2747 and 2938.) The authorized capital of the bank was originally placed at P20,000,000, was later increased to P50,000,000, and was finally reduced to P10,000,000. (Act No. 2612, sec. 3; Act No. 2938, sec. 1; Act No. 3174, sec. 1.) The Government was first authorized to purchase a majority of the shares of the bank at par. (Act No. 2612, sec. 4.) Subsequently, the Government was further authorized to buy not less than 153,000 of the shares and to buy the shares held privately. (Act No. 2938, sec. 1; Act No. 3174, sec. 1.) Of the present outstanding capital stock of the bank consisting of 100,000 shares of a par value of P100 each, 97,332 shares are held by the Government and the remaining 2,668 shares are held by private persons.

The original bank charter provided that the voting power of all the stock of the bank purchased by the Philippine Government "shall be vested exclusively in the Governor-General." (Act No. 2612, sec. 5.) Thereafter it was provided that the voting of the Government stock in the Philippine National Bank 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." (Act No. 2747, sec. 1.) Finally, the provisions relating to the voting power of the Government stock were amended to read as quoted in the opening paragraph of this decision. (Act No. 2938, sec. 1.)

The affairs of the Philippine National Bank are managed by a board of nine directors. Prior to December 23, 1926, A. Gideon, one of the directors of the Philippine National Bank, resigned his office. At the meeting of the board convened on the date mentioned, Director Cotterman offered a resolution providing that a special meeting be held to fill the vacancy so created, and to consider the advisability of repealing section 51 of the by-laws of the bank, by which it had been provided that vacancies in the board should be filled by the vote of the remaining members,

pending action by the stockholders at the annual election. Action on this motion was postponed until the next meeting of the board. This meeting took place on December 28, 1926. Mr. Cotterman's resolution was then again discussed but was defeated. Immediately Director Cotterman presented a petition signed by the Governor-General on behalf of the Philippine Government and of five other shareholders of the Philippine National Bank, in which a demand was made that a special meeting of the stockholders of the bank be called for the purpose of considering the advisability of removing Directors Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia, the repeal of section 51 of the by-laws of the bank, the filling of the vacancy caused by the resignation of Director Gideon, and the election of other directors to fill the vacancies created by the removal of the directors named, should that action be taken by the stockholders. It was requested that the special meeting in question be held at 3 o'clock, p. m., on the 17th day of January, 1927, at the office of the corporation. After submitting the petition, Director Cotterman moved that the special meeting of the stockholders be held in accordance with the petition. On the motion being put to vote, of the eight members of the board present, four voted "yes," three voted "no," and the president of the board remained silent. The chairman thereupon announced that the motion to call a special meeting as requested by the petition was approved. The secretary of the bank sent printed notices of the time, place, and purposes of the proposed special meeting to every shareholder of record of the Philippine National Bank. Notice of call was given by publication in two newspapers of general circulation.

The special meeting was attended by twenty-six private persons owning and representing the owners of ninety-four of the privately-owned shares of the bank, and by the Governor-General asserting the right to attend the meeting in the name and on behalf of the Philippine Government, and to vote the 97,332 shares of stock owned by the Government. The President of the Senate and the Speaker of the House of Representatives failed to attend the meeting, and contented themselves with writing a letter of protest against the meeting on the ground that the Governor-General alone has no right to represent the Philippine Government in relation to the exercise of the voting power of its stock in the bank. The President of the Bank, acting as chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the Government stock without the concurrence of the President of the Senate and the Speaker of the House of Representatives, and that, therefore, a quorum was not present. Upon this he declared the meeting adjourned. The Governor-General protested against the ruling and insisted that a quorum was present. The President of the Bank and several of the private shareholders then left the room.

After all this had happened, the Governor-General and the other stockholders, twenty in number, remained and organized by the election of a chairman pro tempore and a secretary pro tempore. They then proceeded with the business for which the meeting had been called. It was determined by unanimous vote (a) To remove Directors Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia; (b) to amend the by-laws of the bank by striking out section 51 thereof; and (c) to elect Messrs, Manuel Yriarte, John Gordon, A. Gideon, and Leon M. Heras to fill the vacancies created by the resignation of Director Gideon and the removal of the other three directors abovementioned. Mr. Heras subsequently declined the position.

On January 21, 1927, a regular meeting of the board of directors of the Philippine National Bank was held at its office. Messrs. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia as well as the other five directors of the bank whose seats were not contested were present. After the meeting was called to order, Messrs. Manuel Yriarte, John Gordon, and A. Gideon presented themselves, produced their certificates of election, and made demand that they be permitted to participate in the meeting as members-elect of the board of directors of the Philippine National Bank, and that Messrs. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia withdraw from the meeting and cease to exercise any of the duties and powers inherent in the offices of directors of the bank. The presiding officer, who was the President of the Bank, refused to recognize the right of Messrs. Yriarte, Gordon, and Gideon to membership in the board, and Messrs. Agoncillo, Roxas, and Lavadia refused to

vacate the offices held by them, in favor of Messrs. Yriarte, Gordon, and Gideon. Messrs. Agoncillo, Roxas, and Lavadia have since January 17, 1927, exercised the functions of directors of the Philippine National Bank and claim to be entitled to do so.

There grew out of the facts which have been outlined the action of quo warranto brought by the Government of the Philippine Islands. The defendants answered admitting certain facts and denying others. The intervention of the holders of 713 shares of stock having a par value of P71,300 was permitted by stipulation duly approved by this court. The intervenors have made common cause with the defendants.

The main issue has been sufficiently discussed in the previous case of the Government of the Philippine Islands vs. Springer ([1927], p. 259, ante). What was said in that decision may be taken as incorporated herein. What differences there are between the two cases on the principal question incline to strengthen rather than weaken the instant case.

In the National Coal Company case, there was merely a provision for the voting of the stock of the Government in the company by a committee composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives. In the Philippine National Bank case which is before us, there is not alone a provision providing for a "Board of Control," but other provisions directing and authorizing the "Board of Control" to perform many other functions. It is provided in the amended charter of the bank (Act No. 2938) that: (a) Foreign agencies of the bank may not be incorporated without the consent of the Board of Control (sec. 10); (b) the bank may not rediscount commercial paper in cases of emergency without the approval of the Board of Control (sec. 14); (c) the board of directors may not appoint a general manager of the bank or remove him, and may not fix the salary of the general manager of the bank or the assistant general manager without the approval of the Board of Control (sec. 18); (d) the manager of the bank is required to give the Board of Control any information in his possession regarding the operations of the bank (sec. 20); (e) a representative of the Insular Auditor who shall act as chief of the auditing department of the bank and other employees of the department cannot be appointed without the approval of the Board of Control (sec. 22); (f) the payment of compensation to the President or Vice President of the Bank for the performance of the duties of other officers may not be made without the approval of the Board of Control (sec. 23); (g) the Secretary of Finance cannot suspend the requirement of maintaining the proportion of the reserve funds without the approval of the Board of Control (sec. 44); (h) the bank may not guarantee payment of certain bonds and may not buy bonds of other incorporated companies without the approval of the Board of Control (sec. 45).

The application of the doctrine relating to partial invalidity is also here fortified by the rule that where amendments to statute are unconstitutional, the original statute as it existed before the attempted amendment remains in force. (*Eberle vs. Michigan* [1914], 232 U. S., 700; *People vs. Mensching* [1907], 187 N. Y. S., 8; 10 L. R. A., 625.) In this connection, it should be recalled that the original statute vested the voting power of the stock owned by the Government in the bank exclusively in the Governor-General, which was legal, while the amendments found invalid, without express repeal, attempted to transfer this power to an illegally constituted Board of Control.

With the main issue disposed of, the remaining points invite but brief comment. While this is obviously a test case, it is not a moot case as contended by intervenors. It arises from a real and important controversy. The special meeting was properly called at the request of the stockholders owning more than one-third of all the stock of the bank in accordance with section 43 of the by-laws of the bank. Section 34 of the Corporation Law provides that directors of a corporation "may be removed from office by a vote of two-thirds of the members entitled to vote," without specifying whether a motion must be for cause or may be without cause. But here as the defendants are unlawfully holding office, the matter really has little importance. Moreover, even under the system of cumulative

voting, the intervenors could not have elected one director.

Being guided by the decision in the companion case of *Government of the Philippine Islands vs. Springer*, supra, it results that the defendants shall be ousted and altogether excluded from the offices of directors of the Philippine National Bank which they are unlawfully holding, and that the three directors selected by the Governor-General shall be placed in possession of those offices. It is so ordered, without costs.

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

CONCURRING OPINION

JOHNSON, J.,

Under the admitted facts the writ of quo warranto prayed for should be granted. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia are unlawfully and illegally holding and exercising the positions of members of the Board of Directors of the Philippine National Bank and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, 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;
- (c) Were the respondents legally elected as members of the Board of Directors of the Philippine National Bank; and
- (d) What was the effect of the absence of the President of the Senate and the Speaker of the House of Representatives at the time of the election of Manuel Yriarte, John Gordon, and A. Gideon and their failure to participate in the election of members of the Board of Directors of the Philippine National Bank.

The questions presented by the petition, answers and stipulated facts involve the respective powers of two great departments of the Government in matters of the enactment and execution of laws. The Supreme Court is called upon to act as an umpire. The questions presented should be seriously considered by this court and not to be lightly resolved on.

The said questions were presented to the Supreme Court 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 action is (a) to inquire into the right of the respondents Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia to act as members of the Board of Directors of the Philippine National Bank, a private banking 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 Manuel Yriarte, John Gordon, and A. Gideon.

To the petition presented by the Government of the Philippine Islands (ex rel. Manuel Yriarte, John Gordon, and A. Gideon) the respondents demurred. Later the said intervenors were admitted as parties, and presented their answer. By a stipulation of facts a question of law only is presented for solution.

THE FACTS UPON WHICH THE ACTION IS BASED

The facts are not in dispute. They have been stipulated. They are few, clear and well denned. For the purposes of this decision they may be briefly stated. They are: That on the 4th day of February, 1916, the Philippine Legislature adopted Act No. 2612, entitled "An Act creating the Philippine National Bank." Said Act provided that the Philippine National Bank shall be a body corporate and shall have the powers enumerated in section 2 thereof. It further provided that the capital of the Philippine National Bank shall be P20,000,000, Philippine currency, divided into 200,000 shares of the value, at par, of P100, Philippine currency. Section 4 of said Act provided that the Government of the Philippine Islands not later than January 31, 1917, shall purchase 101,000 shares at par of the said National Bank and that 99,000 shares of said capital stock shall be offered to the public at par, in accordance with the provisions of said Act. Section 5 of said Act provided the funds for the purchase of the stock by the Government of the Philippine Islands. Section 5 also provided that the voting power of all stock purchased directly by the Philippine Government, as an investment from the general funds of the Government, and the voting power of all stock purchased, shall be vested exclusively in the Governor-General.

On the 20th day of February, 1919, the Legislature adopted Act No. 2747 entitled "An Act to amend in certain particulars Act Numbered Twenty-six hundred and twelve entitled 'An Act creating the Philippine National Bank.'" That portion of section 5 of Act No. 2612, relating to the voting power of the Governor-General, was amended so as to read as follows: "The voting power of all the stock of the National Bank owned and controlled 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." It will be noted that the voting power, in said amendment (sec. 4, Act No. 2747), of the stock controlled by the Government, is vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

On the 30th day of January, 1921, the Legislature adopted Act No. 2938, entitled "An Act to amend Act Numbered Twenty-six hundred and twelve, entitled 'An Act creating the Philippine National Bank,' as amended by Act Numbered Twenty-seven hundred and forty-seven." By said Act No. 2938 that part of section 4 of Act No. 2747 was amended so as to read as follows: "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a Board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives." It will be noted that the phrase "in a committee" of section 4 of Act No. 2747 was changed to the phrase "in a Board," which shall be a "Board of Control," composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

By section 3 of Act No. 2938 the National Bank was authorized to increase its capital stock from P20,000,000, Philippine currency, to P50,000,000, Philippine currency, and for that purpose was authorized to make a new issue of 300,000 shares of stock. Section 4 of said Act (2938) provided that the Government of the Philippine Islands not later than June 30, 1921, shall purchase all remaining shares of the first issue (twenty million) and part of those of the second issue (fifty million) to the aggregate number of not less than 153,000, and appropriation was made in said Act for the purchase of the additional shares of stock.

Said Acts Nos. 2612, 2747, and 2938 were further amended by Acts Nos. 3033 and 3174. Said last two amendments, however, in no way attempted to alter or change the method of voting the stock held by the Government. It may be noted, however, that by Act No. 3174 the capital stock of the Philippine National Bank was reduced to 100,000 shares at the par value of P100, which number should include the shares held by the public. It was further provided in said last Act that the bank may purchase the shares held privately at the price at which they were quoted on the date of the registration of the sale in the books of the bank, provided that price did

not exceed their value at par and that thereafter no stock of said bank should be sold to the public.

Returning now to said Act No. 2612, creating the Philippine National Bank, we find in subparagraph (f) of section 2 a provision which authorizes the said bank to exercise the general powers mentioned in the Corporation Law (Act No. 1459) in so far as they are not inconsistent or incompatible with the provisions of that Act. Subparagraph (f) is also carried forward and made a part of section 1 of Act No. 2747. The provisions of said subparagraph (f) are also included as a subparagraph of section 1 of Act No. 2938.

The charter of the Philippine National Bank (sec. 20, Act No. 2612; sec. 17, Act No. 2747; sec. 16, Act No. 2938) provided that "the affairs and business of the National Bank shall be managed by a Board of Directors of seven members, except that, by virtue of section 16 of Act No. 2938 the affairs and business of the National Bank shall be directed and its property managed and preserved by a Board of Directors consisting of nine members duly elected as provided in said Act, who shall be paid a per diem of P30 for each session of the Board of Directors attended by them." Section 17 of Act No. 2938 provides that "within the first twenty days after the approval of this Act, and annually on the first Tuesday after the first Monday in March, beginning with the year 1922, the stockholders shall meet to elect the members of the Board of Directors for the current year, each stockholder or proxy to be entitled to as many votes as he may have shares of stock, registered in his name on the 31st of January last preceding and held by him at the time of the election."

The business of the Philippine National Bank continued to be managed by its Board of Directors until late in 1926, when a question was raised 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 bank. 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 each 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 provisions of the charter granting or creating said power was 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 opinion, the Governor-General, evidently for the purpose of avoiding public 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. Said 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 reference to the voting of the stock held by the Government of the Philippine Islands in the Philippine National Bank.

At the time of the issuance of said Executive Order No. 37 the Government of the Philippine Islands owned practically all of the stock of the Philippine National Bank. 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 greater detail, a meeting of the stockholders was called for the purpose of electing and removing members of the Board of Directors of said Bank, and a special meeting of the stockholders was held for that purpose. The meeting was attended by twenty-six private persons owning and representing the owners of ninety-four of the privately owned shares of the bank, and by the Governor-General personally, assuming the right to attend the meeting in the name and on behalf of the Government of the Philippine Islands, and to vote the shares of stock of the bank owned by that Government. Neither the President of the Senate nor the Speaker of the House of Representatives attended the meeting; but they wrote a letter protesting against it, upon the ground that the Governor-General alone has no right to represent the Government of the Philippine Islands in relation to the exercise of the voting power of its stock in the bank. Whereupon the President of the bank, acting as chairman of the meeting, ruled that he could not recognize the right of the Governor-General to vote the Government stock without the concurrence of the President of the Senate and the Speaker of the House of Representatives, and therefore ruled that a quorum was not present and for that reason the special meeting adjourned. Against the ruling, of the chairman, that a quorum was not present and his declaration that the meeting had adjourned, the Governor-General protested and insisted that a quorum was present. Thereupon the President of the Bank and several of the private shareholders, including the Vice President of the Bank, left the room.

Immediately thereafter the Governor-General and the other stockholders, twenty in number, remained and immediately organized the special meeting by the election of a chairman pro tempore and a secretary pro tempore and proceeded with the business for which the special meeting had been called. After the meeting had thus been organized, by unanimous vote taken by written ballots, it was determined: (a) To remove Directors Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia; (b) to amend the by-laws of the bank by striking out section 51 thereof; and (c) to elect Manuel Yriarte, John Gordon, A. Gideon, and Leon M. Heras to fill the vacancies created by the resignation of Director Gideon and the removal of the other three Directors above named. And, accordingly, Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia were removed as directors of said bank, and Manuel Yriarte, John Gordon, A. Gideon, Leon M. Heras were duly elected as members of the Board of Directors of said bank. Later the said Leon M. Heras resigned.

On January 21, 1927, a regular meeting of the Board of Directors of the Philippine National Bank was held at its office, and at which meeting Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia presented themselves. So likewise did Manuel Yriarte, John Gordon; and A. Gideon present themselves at the place of the meeting, produced their certificate of election and made demand that they be permitted to participate in said meeting as members elect of the Board of Directors of the Philippine National Bank; that Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia and each of them withdraw from the meeting and cease to exercise or attempt to exercise any of the duties and powers as members of said Board. The President of the Bank, acting as President of said Board of Directors then present and presiding, refused to recognize the right of (Manuel Yriarte, John Gordon, and A. Gideon as members of said Board, but then and there recognized Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia and each of them as members of the Board. The said Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia and each of them ever since January 17, 1927, have continued to

exercise and do still exercise the functions of the offices of Directors of the Philippine National Bank and claimed to be entitled to do so, while, the said Manuel Yriarte, John Gordon, and A. Gideon and each of them claimed that they were legally and lawfully elected by the majority of the stockholders and that they are now entitled to said offices held adversely to them by the said respondents. For that reason the present action of quo warranto was brought by the Government of the Philippine Islands in relation of Manuel Yriarte, John Gordon, and A. Gideon for the purpose of determining whether they are entitled, by virtue of their election, to act as members of the Board of Directors of the Philippine National Bank; and whether or not the respondents Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia should not be removed and altogether excluded as members of said Board.

Considering the foregoing facts we have the question squarely presented, whether the persons elected,—Manuel Yriarte, John Gordon, and A. Gideon by the unanimous vote at the stockholders meeting have been duly and legally elected Directors of the Philippine National Bank. No question is presented with reference to the election of any other person. No other persons were elected. No opposition at the time of the election was made to the election of Manuel Yriarte, John Gordon, and A. Gideon. The special meeting was regularly and duly called. It was legally held. Manuel Yriarte, John Gordon, and A. Gideon were elected without opposition. Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia simply contend that they were illegally removed and, inasmuch as they were illegally removed, they contend that they have a right to continue to act as members of the Board of Directors.

Even granting for the purpose of the argument that the President of the Senate and the Speaker of the House of Representatives had a right to participate in voting, as members of the Board of Control, the stock belonging to the Government, they were not present at the meeting even though due notice had been given them. They were not represented by proxy. It is difficult now to understand upon what theory they base their right to vote or to participate in voting the stock of the Government when they were not present. There is nothing in the law which defines how the stock shall be voted by the Board of Control when there is a difference of opinion among its members. And in the absence of such regulation, and merely for the purposes of the argument, we are of the opinion that the members of said Board present would have a right to vote the stock held by the Government. Upon that opinion, however, we are not quite ready to rest our conclusion.

Considering the right of the stockholders to remove and elect members of the Board of Directors, and considering that at a special meeting of the stockholders called for that purpose, Manuel Yriarte, John Gordon, and A. Gideon were duly and legally elected without opposition, and that Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia were legally and lawfully removed without opposition, we are at a loss to understand how can there be any legal question concerning the right of the former to occupy the position of the latter as members of the Board of Directors of the Philippine National Bank. These facts alone should be sufficient upon which to base the conclusion that the petitioners should be duly declared elected as members of said Board and that the respondents should be ousted and altogether excluded therefrom.

The general questions involved in the present case have heretofore been discussed in the case of the Government of the Philippine Islands vs. Springer (p. 259, ante). Some of the questions discussed there we deem it advisable to repeat here, and the first question relates to the:

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

In relation with that subject it will be remembered that the Legislative Department of the Government of the Philippines adopted the law creating the charter of the Philippine National Bank. The Legislative Department of

the Government in said charter provided a method by which it, through the President of the Senate and the Speaker of the House of Representatives, should assist in the execution of that law. Reference is hereby made to the decision in the case of the Government of the Philippine Islands vs. Springer, supra, for a general discussion of the question of the right of the legislative department of the Government to execute or assist in the execution of its laws. Many authorities are there cited, supporting the doctrine that the legislative department of the government has no authority to do so.

In the present case the Legislature provided, by section 4 of Act No. 2612, "that the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the Government * * *, shall be vested exclusively in the Governor-General." Said section 4 was amended by section 4 of Act No. 2747 so as to read:

"The voting power of all the stock of the National Bank owned and controlled 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."

Said section 4 of Act No. 2747 was further amended by section 4 of Act No. 2938 so as to read:

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

The law is not clear, showing why the word "committee" was changed to a "Board of Control" unless the reason is found in further provisions of said Act (2938) which give the "Board of Control" further and other rights in the management of the Philippine National Bank, than the mere participation in the voting of the stock. Said Act (2938) attempts to give the President of the Senate and the Speaker of the House of Representatives participation in the execution of the law governing the Philippine National Bank in many instances. Their participation in the execution of said law is found in subparagraph (f) of section 10, in the proviso found in section 14, in section 18, in section 20, in section 22, in section 23, in section 44, and in section 45 of said law. A reading of said sections shows that the Board of Directors is limited in their authority in many ways. There are many things which the Board of Directors had been authorized theretofore to do, which it was not permitted to do under Act No. 2938, except with the approval of the "Board of Control." Thus it will be seen that the phrase "Board of Control" as used in section 4 of Act No. 2938 included many powers which had not theretofore been given to the committee, and that the President of the Senate and the Speaker of the House of Representatives, as members of the "Board of Control," were not only given authority to participate in the execution of said law with reference to the voting of the stock, but in a dozen other ways, in the management and control of the bank.

Basing our conclusions upon the arguments adduced in the case of the National Coal Company (Government of the Philippine Islands vs. Springer, supra), we are forced to the conclusion that, that portion of Act No. 2938 which permits the President of the Senate and Speaker of the House of Representatives to participate in the execution of said law in the manner therein permitted, is illegal and void.

Another reason might be given why said particular provisions are null and void is, that there is nothing in the title of the Act which in the slightest degree indicates that such powers had been conferred upon the "Board of Control." The question relating to what the title of an Act must contain has already been discussed in the case of the National Coal Company (Government of the Philippine Islands vs. Springer, supra). There is nothing in the title which indicates to the Board of Directors, the stockholders or the public, that it was the intention of the Legislature to participate in the control of the Philippine National Bank in the manner provided in said Act No.

2938. The Jones Law prohibits the inclusion in a law of more than one subject and requires that, that subject shall be expressed in the title of the bill.

POWER OF THE LEGISLATIVE DEPARTMENTS 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.

Under a constitutional government, where the different departments of government are separated and each given a definite field within which to exercise its functions, it may be said that each department has no authority to enter upon the field of another department and attempt to perform the duties therein. The power of the legislature is the power to legislate only and to make such investigations as are necessary for that purpose. In the present case and under the charter of the Philippine National Bank the "Board of Control" has entered, through the President of the Senate and the Speaker of the House of Representatives as representatives of the Legislative Department of the Government, upon the field of the Executive Department for the purpose of assisting in the execution of laws and with the pretended majority of said Board, are attempting to take the execution of the law into their own hands. That cannot be permitted where the different departments of government are given separate and distinct fields within which to operate.

What was said in the case of the National Coal Company (Government of the Philippine Islands vs. Springer, supra) in relation to:

- (a) Powers of the Legislature granted by the Philippine Charter;
- (b) The authority of the Philippine Legislature to enact laws is a delegated authority;
- (c) The existing sovereign in the Philippine Islands;
- (d) The right of the Philippine Legislature to appoint Committees and Boards of Control to assist in the execution of the laws; is hereby made a part of this decision. Those questions are fully discussed in the decision in said case of the National Coal Company.

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

The charter of the Philippine Government 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' " Stronger language could not have been used for the purpose of conferring upon the Governor-General of the Philippine Islands the full executive powers of the Government. There is nothing in any of the provisions of the charter of the Philippine Government 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. The Governor-General, as the supreme executive power, is held responsible for the faithful execution of the laws of the Philippine Islands. For the faithful execution of the laws he alone has the Ultimate responsibility. He is not justified in allowing a division of that authority. Mr. Baker, who was Secretary of War of the United States at the time the charter of the Philippine Islands 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: "It would seem to be the part of wisdom for the President and the Governor-General to admit of no encroachments on those powers placed in their hands."

A feeble executive in the administration of his department implies a feeble execution of the laws 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 and a possible loss of the property of the state and the deprivation of the rights of the citizens.

DUTY OF THE GOVERNOR-GENERAL WHEN ADVISED OF THE ILLEGALITY OF A LAW—HE MAY DISREGARD IT OR FORMULATE A PROPER ISSUE TO BE PRESENTED TO THE COURTS 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 at liberty to take either course. 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 law.

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

It needs no citation of authorities to sustain the doctrine that each department of government, invested with constitutional or charter powers, must, in the performance of their legal duties, in many instances be the judge of their powers, or otherwise they could not act. Such interpretation of their powers is not exclusive, however. The parties aggrieved may resort to the courts for a judicial interpretation.

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 in that regard is then one of great seriousness. He should not supinely disregard it. While the legislative department of the Government may adopt laws for safeguarding or 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 Government.

WHAT HAS BEEN DONE BY LEGISLATIVE DEPARTMENT FURNISHES NO NECESSARY CRITERION AS TO ITS REAL POWER

Our attention has been called to many laws in which the Legislative Department of the Government has either directly or indirectly attempted to participate in the enforcement of the same. The fact that such laws have been enforced, without question, furnishes no criterion, nor is the Government estopped from raising the question of the legality of such acts in subsequent actions. The mere fact that legality of acts have 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. 2747, AS AMENDED
BY ACT NO. 2938, CREATING THE "BOARD OF CONTROL"

In addition to the contention that the Legislature, by virtue of the provisions of Acts Nos. 2747 and 2938, 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 "Board of Control." One of the inhibitions against the power of the Philippine Legislature is found in one of the paragraphs of section 3 of the Jones Law. Said paragraph 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." From a reading of the provisions of the charter of the Philippine National Bank in relation with the title of said law, it will be seen that in each of said Act more than one subject is covered. There is nothing in the title of the Acts which gave even the members of the Legislature the slightest idea that it was adopting a law which contained a provision, through which, the Legislature itself by means of the "Board of Control," should participate directly in their execution.

The purpose of that 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 section 111 of his valuable work on Statutory Construction he says:

"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 accompanied 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 seasonably 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."

The authorities are, to all intents, uniform that this constitutional requirement is mandatory and not directory. (*Central Capiz vs. Ramirez*, 40 Phil., 883.)

Inasmuch as the body of said Acts 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 "Board of Control" is illegal and void. That illegality, however, is one which may be separated from the rest of the Acts without affecting the legality of the other provisions, except those which permit the "Board of Control" to interfere or to assist in controlling the operations of the Philippine National Bank as indicated above.

"THE BOARD OF CONTROL" AND MEMBERS THEREOF, AS PUBLIC OFFICERS OF THE GOVERNMENT

Considering the view which we have taken concerning the legality of the creation of the "Board of Control," it is a matter of very little importance whether the members of said Board, in the performance of their duties, are public officers or not. Reference is hereby made to a further discussion of this particular subject in the case of the National Coal Company (Government of the Philippine Islands vs. Springer, *supra*).

THE RIGHT OF THE COURT TO DECIDE THE QUESTION, WHAT ARE THE RESPECTIVE POWERS OF THE DIFFERENT DEPARTMENTS OF GOVERNMENT, AND THE LEGALITY OF LAWS

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 subjectmatter 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 even has claimed, within its discretionary and legal powers, a greater zeal than the others in its desire to promote the Welfare of the individual citizens. 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.

INTERVENORS

The intervenors contend that the said Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia had been illegally removed from the Board of Directors of the Philippine National Bank for the reason that there existed no valid and lawful reason for their removal; that no cause had been given or charges preferred against them which would justify the action taken by the stockholders; that the removal of said respondents was purely an arbitrary act on the part of the Governor-General and the other private stockholders, and was done for the sole purpose of raising the issue and formulating a moot case as regards the Philippine National Bank on the legality of section 4 of Act No. 2612 as amended by Acts Nos. 2747 and 2938; that the attempted removal of said Directors will inevitably affect the management and administration of the business and affairs of the Philippine National Bank and will result in the impairment of its credit, reputation and stability as a financial institution, to the irreparable damage of the intervenors and other stockholders of said Bank. In reply to that argument, it may be said:

- (a) That the meeting of the stockholders for the purpose of removing said Directors was duly and legally called;
- (b) That the resolution of the Board of Directors, calling said meeting of the stockholders for the purpose "indicated, was within the authority of said Board;
- (c) That notice of the particular purpose of the meeting was given;
- (d) That in pursuance of the regular call for the special meeting of the Board of Directors, the meeting was properly held;
- (e) That no protest was made even by the respondents or by any other of the stockholders of the Philippine National Bank to the holding of said meeting; and
- (f) That under the provisions of section 34 of Act No. 1459 the stockholders were authorized to remove said Directors, Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia,

After a full consideration of the law and facts, in relation with the arguments of the petitioners and the intervenors, we are fully persuaded that there exists no lawful reason for declaring that the stockholders at said special meeting had not acted within their power and authority in the removal from the Board of Directors of the Philippine National Bank of said Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia. The prayer of the petition, therefore, of the intervenors is hereby denied.

CONCLUSIONS

For all of the foregoing reasons the petition for the extraordinary legal writ of quo wasrranto should be granted, and that Gregorio Agoncillo, Baldomero Roxas, and Catalino Lavadia are each illegally and unlawfully occupying the position of member of the Board of Directors of the Philippine National Bank and should be ousted and altogether excluded therefrom; that Manuel Yriarte, John Gordon, and A. Gideon have been duly and legally elected as members of the Board of Directors of the Philippine National Bank, 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.

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

Our dissent here is based on the same grounds as our dissent in the companion case, the Government of the Philippine Islands vs. Springer (p. 259, ante), particularly on the ground that section 4 of Act No. 2612, as amended by section 1 of Act No. 2747, by which the Board of Control has been, created, being constitutional and valid, the Governor-General alone, without the concurrence of the President of the Senate and the Speaker of the House of Representatives, who with him composed the said Board, cannot vote the stock of the Government in the Philippine National Bank, inasmuch as the voting of such stock is a mere delegation of power by a stockholder for a private purpose (Bank of the United States vs. Planter's Bank of Georgia, 6 Law. ed., 244; Bank, of Kentucky vs. Wister, 7 Law. ed., 318) the exercise of which requires discretion and judgment (18 C. J., 472, note 3.[a]).

The complaint should be dismissed.

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