

JOSE A. ANGARA, PETITIONER, VS. THE ELECTORAL COMMISSION, PEDRO YNSUA, MIGUEL CASTILLO, AND DIONISIO C. MAYOR, RESPONDENTS.

G. R. No. 45081. July 15, 1936

Ponente: LAUREL, J.

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LAUREL, J.:

This is an original action instituted in this court by the petitioner, Jose A. Angara, for the issuance of a writ of prohibition to restrain and prohibit the Electoral Commission, one of the respondents, from taking further cognizance of the protest filed by Pedro Ynsua, another respondent, against the election of said petitioner as member of the National Assembly for the first assembly district of the Province of Tayabas.

The facts of this case as they appear in the petition and as admitted by the respondents are as follows:

(1) That in the elections of September 17, 1935, the petitioner, Jose A. Angara, and the respondents, Pedro Ynsua, Miguel Castillo and Dionisio Mayor, were candidates voted for the position of member of the National Assembly for the first district of the Province of Tayabas;

(2) That on October 7, 1935, the provincial board of canvassers, proclaimed the petitioner as member-elect of the National Assembly for the said district, for having received the most number of votes;

(3) That on November 15, 1935, the petitioner took his oath of office;

(4) That on December 3, 1935, the National Assembly in session assembled, passed the following resolution:
"[No. 8] "

RESOLUCION CONFIRMANDO LAS ACTAS DE AQUE-LLOS DIPUTADOS CONTRA QUIENES NO SE HA PRESENTADO PROTESTA.

"Se resuelve: Que las actas de eleccion de los Diputados contra quienes no se hubiere presentado debidamente una protesta antes de la adopcion de la presente resolucion sean, como por la presente, son aprobadas y confirmadas. "Adoptada, 3 de diciembre, 1935."

(5) That on December 8, 1935, the herein respondent Pedro Ynsua filed before the Electoral Commission a "Motion of Protest" against the election of the herein petitioner, Jose A. Angara, being the only protest filed after the passage of Resolution No. 8 aforequoted, and praying, among other things, that said respondent be declared elected member of the National Assembly for the first district of Tayabas, or that the election of said position be nullified;

(6) That on December 9, 1935, the Electoral Commission adopted a resolution, paragraph 6 of which provides:

"6. La Comision no considerara ninguna protesta que no se haya presentado en o antes de este dia."

(7) That on December 20, 1935, the herein petitioner, Jose A. Angara, one of the respondents in the aforesaid protest, filed before the Electoral Commission a "Motion to Dismiss the Protest", alleging (a) that Resolution No.

8 of the National Assembly was adopted in the legitimate exercise of its constitutional prerogative to prescribe the period during which protests against the election of its members should be presented; (6) that the aforesaid resolution has for its object, and is the accepted formula for, the limitation of said period; and (c) that the protest in question was filed out of the prescribed period;

(8) That on December 27, 1935, the herein respondent, Pedro Ynsua, filed an "Answer to the Motion of Dismissal" alleging that there is no legal or constitutional provision barring the presentation of a protest against the election of a member of the National Assembly, after confirmation;

(9) That on December 31, 1935, the herein petitioner, Jose A. Angara, filed a "Reply" to the aforesaid "Answer to the Motion of Dismissal";

(10) That the case being submitted for decision, the Electoral Commission promulgated a resolution on January 23, 1936, denying herein petitioner's "Motion to Dismiss the Protest."

The application of the petitioner sets forth the following grounds for the issuance of the writ prayed for:

(a) That the Constitution confers exclusive jurisdiction upon the Electoral Commission solely as regards the merits of contested elections to the National Assembly;

(b) That the Constitution excludes from said jurisdiction the power to regulate the proceedings of said election contests, which power has been reserved to the Legislative Department of the Government or the National Assembly;

(c) That like the Supreme Court and other courts created in pursuance of the Constitution, whose exclusive jurisdiction relates solely to deciding the merits of controversies submitted to them for decision and to matters involving their internal organization, the Electoral Commission can regulate its proceedings only if the National Assembly has not availed of its primary power to so regulate such proceedings;

(d) That Resolution No. 8 of the National Assembly is, therefore, valid and should be respected and obeyed;

(e) That under paragraph 13 of section 1 of the Ordinance appended to the Constitution and paragraph 6 of article 7 of the Tydings-McDuffie Law (No. 127 of the 73rd Congress of the United States) as well as under sections 1 and 3 (should be sections 1 and 2) of article VIII of the Constitution, this Supreme Court has jurisdiction to pass upon the fundamental question herein raised because it involves an interpretation of the Constitution of the Philippines.

On February 25, 1936, the Solicitor-General appeared and filed an answer in behalf of the respondent Electoral Commission interposing the following special defenses:

(a) That the Electoral Commission has been created by the Constitution as an instrumentality of the Legislative Department invested with the jurisdiction to decide "all contests relating to the election, returns, and qualifications of the members of the National Assembly"; that in adopting its resolution of December 9, 1935, fixing this date as the last day for the presentation of protests against the election of any member of the National Assembly, it acted within its jurisdiction and in the legitimate exercise of the implied powers granted it by the Constitution to adopt the rules and regulations essential to carry out the powers and functions conferred upon the same by the fundamental law; that in adopting its resolution of January 23, 1936, overruling the motion of the petitioner to dismiss the election protest in question, and declaring itself with jurisdiction to take cognizance of said protest, it acted in the legitimate exercise of its quasi-judicial functions as an instrumentality of the Legislative Department of the Commonwealth Government, and hence said act is beyond the judicial cognizance or control of the Supreme Court;

(b) That the resolution of the National Assembly of December 3, 1935, confirming the election of the members of the National Assembly against whom no protest had thus far been filed, could not and did not deprive the

Electoral Commission of its jurisdiction to take cognizance of election protests filed within the time that might be set by its own rules;

(c) That the Electoral Commission is a body invested with quasi-judicial functions, created by the Constitution as an instrumentality of the Legislative Department, and is not an "inferior tribunal, or corporation, or board, or person" within the purview of sections 226 and 516 of the Code of Civil Procedure, against which prohibition would lie.

The respondent Pedro Ynsua, in his turn, appeared and filed an answer in his own behalf on March 2, 1936, setting forth the following as his special defense:

(a) That at the time of the approval of the rules of the Electoral Commission on December 9, 1935, there was no existing law fixing the period within which protests against the election of members of the National Assembly should be filed; that in fixing December 9, 1935, as the last day for the filing of protests against the election of members of the National Assembly, the Electoral Commission was exercising a power impliedly conferred upon it by the Constitution, by reason of its quasi-judicial attributes;

(b) That said respondent presented his motion of protest before the Electoral Commission on December 9, 1935, the last day fixed by paragraph 6 of the rules of the said Electoral Commission;

(c) That therefore the Electoral Commission acquired jurisdiction over the protest filed by said respondent and over the parties thereto, and the resolution of the Electoral Commission of January 23, 1936, denying petitioner's motion to dismiss said protest was an act within the jurisdiction of the said commission, and is not reviewable by means of a writ of prohibition;

(d) That neither the law nor the Constitution requires confirmation by the National Assembly of the election of its members, and that such confirmation does not operate to limit the period within which protests should be filed as to deprive the Electoral Commission of jurisdiction over protests filed subsequent thereto;

(e) That the Electoral Commission is an independent entity created by the Constitution, endowed with quasi-judicial functions, whose decisions are final and unappealable;

(f) That the Electoral Commission, as a constitutional creation, is not an inferior tribunal, corporation, board or person, within the terms of sections 226 and 516 of the Code of Civil Procedure; and that neither under the provisions of sections 1 and 2 of article II (should be article VIII) of the Constitution and paragraph 13 of section 1 of the Ordinance appended thereto could it be subject in the exercise of its quasi-judicial functions to a writ of prohibition from the Supreme Court;

(g) That paragraph 6 of article 7 of the Tydings-McDuffie Law (No. 127 of the 73rd Congress of the United States) has no application to the case at bar. The case was argued before us on March 13, 1936. Before it was submitted for decision, the petitioner prayed for the issuance of a preliminary writ of injunction against the respondent Electoral Commission which petition was denied "without passing upon the merits of the case" by resolution of this court of March 21, 1936.

There was no appearance for the other respondents.

The issues to be decided in the case at bar may be reduced to the following two principal propositions:

- Has the Supreme Court jurisdiction over the Electoral Commission and the subject matter of the controversy upon the foregoing related facts, and in the affirmative,
- Has the said Electoral Commission acted without or in excess of its jurisdiction in assuming to take cognizance of the protest filed against the election of the herein petitioner notwithstanding the previous confirmation of such election by resolution of the National Assembly?

We could perhaps dispose of this case by passing directly upon the merits of the controversy. However, the question of jurisdiction having been presented, we do not feel justified in evading the issue. Being a case *primum impressionis*, it would hardly be consistent with our sense of duty to overlook the broader aspect of the question and leave it undecided. Neither would we be doing justice to the industry and vehemence of counsel were we not to pass upon the question of jurisdiction squarely presented to our consideration.

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. For example, the Chief Executive under our Constitution is so far made a check on the legislative power that this assent is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent through its Commission on Appointments is necessary in the appointment of certain officers; and the concurrence of a majority of all its members is essential to the conclusion of treaties. Furthermore, in its power to determine what courts other than the Supreme Court shall be established, to define their jurisdiction and to appropriate funds for their support, the National Assembly controls the judicial department to a certain extent. The Assembly also exercises the judicial power of trying impeachments. And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

As any human production, our Constitution is of course lacking perfection and perfectibility, but as much as it was within the power of our people, acting through their delegates to so provide, that instrument which is the expression of their sovereignty however limited, has established a republican government intended to operate and function as a harmonious whole, under a system of checks and balances, and subject to specific limitations and restrictions provided in the said instrument. The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our Constitution.

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.

But much as we might postulate on the internal checks of power provided in our Constitution, it ought not the less to be remembered that, in the language of James Madison, the system itself is not "the chief palladium of constitutional liberty * * * the people who are authors of this blessing must also be its guardians * * * their eyes must be ever ready to mark, their voice to pronounce * * * aggression on the authority of their constitution." In the last and ultimate analysis, then, must the success of our government in the unfolding years to come be tested in the crucible of Filipino minds and hearts than in consultation rooms and court chambers.

In the case at bar, the National Assembly has by resolution (No. 8) of December 3, 1935, confirmed the election of the herein petitioner to the said body. On the other hand, the Electoral Commission has by resolution adopted on December 9, 1935, fixed said date as the last day for the filing of protests against the election, returns and qualifications of members of the National Assembly, notwithstanding the previous confirmation made by the National Assembly as aforesaid. If, as contended by the petitioner, the resolution of the National Assembly has the effect of cutting off the power of the Electoral Commission to entertain protests against the election, returns and qualifications of members of the National Assembly, submitted after December 3, 1935, then the resolution of the Electoral Commission of December 9, 1935, is mere surplusage and had no effect. But, if, as contended by the respondents, the Electoral Commission has the sole power of regulating its proceedings to the exclusion of the National Assembly, then the resolution of December 9, 1935, by which the Electoral Commission fixed said date as the last day for filing protests against the election, returns and qualifications of members of the National Assembly, should be upheld.

Here is then presented an actual controversy involving as it does a conflict of a grave constitutional nature between the National Assembly on the one hand, and the Electoral Commission on the other. From the very nature of the republican government established in our country in the light of American experience and of our own, upon the judicial department is thrown the solemn and inescapable obligation of interpreting the Constitution and defining constitutional boundaries. The Electoral Commission, as we shall have occasion to refer hereafter, is a constitutional organ, created for a specific purpose, namely to determine all contests relating to the election, returns and qualifications of the members of the National Assembly. Although the Electoral Commission may not be interfered with, when and while acting within the limits of its authority, it does not follow that it is beyond the reach of the constitutional mechanism adopted by the people and that it is not subject to constitutional restrictions. The Electoral Commission is not a separate department of the government, and even if it were,

conflicting claims of authority under the fundamental law between departmental powers and agencies of the government are necessarily determined by the judiciary in justifiable and appropriate cases. Discarding the English type and other European types of constitutional government, the framers of our Constitution adopted the American type where the written constitution is interpreted and given effect by the judicial department. In some countries which have declined to follow the American example, provisions have been inserted in their constitutions prohibiting the courts from exercising the power to interpret the fundamental law. This is taken as a recognition of what otherwise would be the rule that in the absence of direct prohibition courts are bound to assume what is logically their function. For instance, the Constitution of Poland of 1921, expressly provides that courts shall have no power to examine the validity of statutes (art. 81, chap. IV). The former Austrian Constitution contained a similar declaration. In countries whose constitutions are silent in this respect, courts have assumed this power. This is true in Norway, Greece, Australia and South Africa. Whereas, in Czechoslovakia (arts. 2 and 3, Preliminary Law to Constitutional Charter of the Czechoslovak Republic, February 29, 1920) and Spain (arts. 121-123, Title IX, Constitution of the Republic of 1931) especial constitutional courts are established to pass upon the validity of ordinary laws. In our case, the nature of the present controversy shows the necessity of a final constitutional arbiter to determine the conflict of authority between two agencies created by the Constitution. Were we to decline to take cognizance of the controversy, who will determine the conflict? And if the conflict were left undecided and undetermined, would not a void be thus created in our constitutional system which may in the long run prove destructive of the entire framework? To ask these questions is to answer them. *Natura vacuum abhorret*, so must we avoid exhaustion in our constitutional system. Upon principle* reason and authority, we are clearly of the opinion that upon the admitted facts of the present case, this court has jurisdiction over the Electoral Commission and the subject matter of the present controversy for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as "the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly."

Having disposed of the question of jurisdiction, we shall now proceed to pass upon the second proposition and determine whether the Electoral Commission has acted without or in excess of its jurisdiction in adopting its resolution of December 9, 1935, and in assuming to take cognizance of the protest filed against the election of the herein petitioner notwithstanding the previous confirmation thereof by the National Assembly on December 3, 1935. As able counsel for the petitioner has pointed out, the issue hinges on the interpretation of section 4 of Article VI of the Constitution which provides:

"SEC. 4. There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its Chairman, The Electoral Commission shall be the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly." It is imperative, therefore, that we delve into the origin and history of this constitutional provision and inquire into the intention of its framers and the people who adopted it so that we may properly appreciate its full meaning, import and significance.

The original provision regarding this subject in the Act of Congress of July 1, 1902 (sec. 7, par. 5) laying down the rule that "the assembly shall be the judge of the elections, returns, and qualifications of its members", was taken from clause 1 of section 5, Article I of the Constitution of the United States providing that "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, * * *." The Act of Congress of August 29, 1916 (sec. 18, par. 1) modified this provision by the insertion of the word "sole" as follows: "That the Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, * * *" apparently in order to emphasize the exclusive character of the jurisdiction conferred upon each House of the Legislature over the particular cases therein specified. This court

has had occasion to characterize this grant of power to the Philippine Senate and House of Representatives, respectively, as "full, clear and complete" (*Veloso vs. Boards of Canvassers of Leyte and Samar* [1919], 39 Phil., 886, 888.)

The first step towards the creation of an independent tribunal for the purpose of deciding contested elections to the legislature was taken by the sub-committee of five appointed by the Committee on Constitutional Guarantees of the Constitutional Convention, which sub-committee submitted a report on August 30, 1934, recommending the creation of a Tribunal of Constitutional Security empowered to hear protests not only against the election of members of the legislature but also against the election of executive officers for whose election the vote of the whole nation is required, as well as to initiate impeachment proceedings against specified executive and judicial officers. For the purpose of hearing legislative protests, the tribunal was to be composed of three justices designated by the Supreme Court and six members of the house of the legislature to which the contest corresponds, three members to be designated by the majority party and three by the minority, to be presided over by the Senior Justice unless the Chief Justice is also a member in which case the latter shall preside. The foregoing proposal was submitted by the Committee on Constitutional Guarantees to the Convention on September 15, 1934, with slight modifications consisting in the reduction of the legislative representation to four members, that is, two senators to be designated one each from the two major parties in the Senate and two representatives to be designated one each from the two major parties in the House of Representatives, and in awarding representation to the executive department in the persons of two representatives to be designated by the President.

Meanwhile, the Committee on Legislative Power was also preparing its report. As submitted to the Convention on September 24, 1934, subsection, 5, section 5, of the proposed Article on the Legislative Department, reads as follows:

"The elections, returns and qualifications of the members of either House and all cases contesting the election of any of their members shall be judged by an Electoral Commission, constituted, as to each House, by three members elected by the members of the party having the largest number of votes therein, three elected by the members of the party having the second largest number of votes, and as to its Chairman, one Justice of the Supreme Court designated by the Chief Justice."

The idea of creating a Tribunal of Constitutional Security with comprehensive jurisdiction as proposed by the Committee on Constitutional Guarantees which was probably inspired by the Spanish plan (art. 121, Constitution of the Spanish Republic of 1931), was soon abandoned in favor of the proposition of the Committee on Legislative Power to create a similar body with reduced powers and with specific and limited jurisdiction, to be designated as an Electoral Commission. The Sponsorship Committee modified the proposal of the Committee on Legislative Power with respect to the composition of the Electoral Commission and made further changes in phraseology to suit the project of adopting a unicameral instead of a bicameral legislature. The draft as finally submitted to the Convention on October 26, 1934, reads as follows:

"(6) The elections, returns and qualifications of the Members of the National Assembly and all cases contesting the election of any of its Members shall be judged by an Electoral Commission, composed of three members elected by the party having the largest number of votes in the National Assembly, three elected by the members of the party having the second largest number of votes, and three justices of the Supreme Court designated by the Chief Justice, the Commission to be presided over by one of said justices."

During the discussion of the amendment introduced by Delegates Labrador, Abordo, and others, proposing to strike out the whole subsection of the foregoing draft and inserting in lieu thereof the following: "The National Assembly shall be the sole and exclusive judge of the elections, returns, and qualifications of the Members", the

following illuminating remarks were made on the floor of the Convention in its session of December 4, 1934, as to the scope of the said draft:

* * * * *

"Mr. Ventura. Mr. President, we have a doubt here as to the scope of the meaning of the first four lines, paragraph 6, page 11 of the draft, reading: The elections, returns and qualifications of the Members of the National Assembly and all cases contesting the election of any of its Members shall be judged by an Electoral Commission, * * * I should like to ask from the gentleman from Capiz whether the election and qualification of the member whose election is not contested shall also be judged by the Electoral Commission.

"Mr. Roxas. If there is no question about the election of the members, there is nothing to be judged; that is why the word 'judge' is used to indicate a controversy. If there is no question about the election of a member, there is nothing to be submitted to the Electoral Commission and there is nothing to be determined.

"Mr. Ventura. But does that carry the idea also that the Electoral Commission shall confirm also the election of those whose election is not contested?

"Mr. Roxas. There is no need of confirmation. As the gentleman knows, the action of the House of Representatives confirming the election of its members is just a matter of the rules of the assembly. It is not constitutional. It is not necessary. After a man files his credentials that he has been elected, that is sufficient, unless his election is contested.

"Mr. Ventura.

But I do not believe that that is sufficient, as we have observed that for purposes of the auditor, in the matter of election of a member to a legislative body, because he will not authorize his pay.

"Mr. Roxas.

Well, what is the case with regards to the municipal president who is elected? What happens with regards to the councilors of a municipality? Does anybody confirm their election? The municipal council does this: it makes a canvass and proclaims—in this case the municipal council proclaims who has been elected, and it ends there, unless there is a contest. It is the same case; there is no need on the part of the Electoral Commission unless there is a contest. The first clause refers to the case referred to by the gentleman from Cavite where one person tries to be elected in place of another who was declared elected. For example, in a case when the residence of the man who has been elected is in question, or in case the citizenship of the man who has been elected is in question.

"However, if the assembly desires to annul the power of the commission, it may do so by certain maneuvers upon its first meeting when the returns are submitted to the assembly. The purpose is to give to the Electoral Commission all the powers exercised by the assembly referring to the elections, returns and qualifications of the members. When there is no contest, there is nothing to be judged.

"Mr. Ventura. Then it should be eliminated.

"Mr. Roxas. But that is a different matter, I think Mr. Delegate.

"Mr. CINCO.

Mr. President, I have a similar question as that propounded by the gentleman from Ilocos Norte when I arose a while ago. However I want to ask more questions from the delegate from Capiz. This paragraph 6 on page 11 of the draft cites cases contesting the election as separate from the first part of the section which refers to elections, returns and qualifications.

"Mr. Roxas. That is merely for the sake of clarity. In fact the cases of contested elections are already included in the phrase 'the elections, returns and qualifications.' This phrase 'and contested elections' was inserted merely for the sake of clarity.

"Mr. Cinco. Under this paragraph, may not the Electoral Commission, at its own instance refuse to confirm the election of the members?

"Mr. Roxas. I do not think so, unless there is a protest.

"Mr. Labrador. Mr. President, will the gentleman yield?

"The President. The gentleman may yield, if he so desires.

"Mr. Roxas. Willingly.

"Mr. Labrador. Does not the gentleman from Capiz believe that unless this power is granted¹ to the assembly, the assembly on its own motion does not have the right to contest the election and qualification of its members ?

"Mr. Roxas.

I have no doubt but that the gentleman is right. If this draft is retained as it is, even if two-thirds of the assembly believe that a member has not the qualifications provided by law, they cannot remove him for that reason.

Mr. Labrador. So that the right to remove shall only be retained by the Electoral Commission.

"Mr. Roxas. By the assembly for misconduct.

"Mr. Labrador. I mean with respect to the qualifications of the members.

"Mr. Roxas. Yes, by the Electoral Commission.

"Mr. Labrador. So that under this draft, no member of the assembly has the right to question the eligibility of its members?

"Mr. Roxas. Before a member can question the eligibility, he must go to the Electoral Commission and make the question before the Electoral Commission.

"Mr. Labrador. So that the Electoral Commission shall decide whether the election is contested or not contested.

"Mr. Roxas.

Yes, sir: that is the purpose.

"Mr. Pelayo. Mr. President, I would like to be informed if the Electoral Commission has power and authority to pass upon the qualifications of the members of the National Assembly even though that question has not been raised.

"Mr. Roxas. I have just said that they have no power, because they can only judge."

In the same session, the first clause of the aforesaid draft reading "The election, returns and qualifications of the members of the National Assembly and" was eliminated by the Sponsorship Committee in response to an amendment introduced by Delegates Francisco, Ventura, Vinzons, Rafols, Lim, Mumar and others. In explaining the difference between the original draft and the draft as amended, Delegate Roxas speaking for the Sponsorship Committee said

"Sr. Roxas. La diferencia, señor Presidents consiste solamente en obviar la objeción apuntada por varios Delegados al efecto de que la primera cláusula del draft que dice: 'The election, returns and qualifications of the members of the National Assembly' parece que da a la Comisión Electoral la facultad de determinar también la elección de los miembros que no han sido protestados y para obviar esa dificultad, creemos que la enmienda tiene razón en ese sentido, si enmendamos el draft, de tal modo que se lea como sigue: 'All cases contesting the election', de modo que los jueces de la Comisión Electoral se limitaran solamente a los casos en que haya habido protesta contra las actas." Before the amendment of Delegate Labrador was voted upon the following interpellation also took place:

"El Sr. CONEJERO. Antes de votarse la enmienda, quisiera pedir información del Subcomité de Siete.

"El Sr. Presidents. ¿Que dice el Comité?

"El Sr. Roxas. Con mucho gusto.

"El Sr. Conejero. Tal como está el draft, dando tres miembros a la mayoría, y otros tres a la minoría y trece a la Corte Suprema, ¿no cree usted, Señor, que esto equivale prácticamente a dejar el asunto a los miembros del Tribunal Supremo?

"El Sr. Roxas.

Si y no. Creemos que si el tribunal o la Comisión está constituido en esa forma tanto los miembros de la mayoría como los de la minoría así como los miembros de la Corte Suprema consideraran la cuestión sobre la base de sus méritos, sabiendo que el partidismo no es suficiente para dar el triunfo.

"El Sr. Conejero. ¿Cree usted, Señor, que en un caso como ese, podríamos hacer que tanto los de la mayoría como los de la minoría prescindieran del partidismo?

"El Sr. Roxas. Creo que sí, porque el partidismo no les daría el triunfo.

* * * * *

The amendment introduced by Delegates Labrador, Abordo and others seeking to restore the power to decide contests relating to the election, returns and qualifications of members of the National Assembly to the National Assembly itself, was defeated by a vote of ninety-eight (98) against fifty-six (56).

In the same session of December 4, 1934, Delegate Cruz (C.) sought to amend the draft by reducing the representation of the minority party and the Supreme Court in the Electoral Commission to two members each, so as to accord more representation to the majority party. The Convention rejected this amendment by a vote of seventy-six (76) against forty-six (46), thus maintaining the non-partisan character of the commission.

As approved on January 31, 1935, the draft was made to read as follows:

" (6) All cases contesting the elections, returns and qualifications of the Members of the National Assembly shall be judged by an Electoral Commission, composed of three members elected by the party having the largest number of votes in the National Assembly, three elected by the members of the party having the second largest number of votes, and three justices of the Supreme Court designated by the Chief Justice, the Commission to be presided over by one of said justices."

The Style Committee to which the draft was submitted revised it as follows:

"SEC. 4. There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its chairman. The Electoral Commission shall be

the sole judge of the election, returns, and qualifications of the Members of the National Assembly."

When the foregoing draft was submitted for approval on February 8, 1935, the Style Committee, through President Recto, to effectuate the original intention of the Convention, agreed to insert the phrase "All contests relating to" between the phrase "judge of" and the words "the election", which was accordingly accepted by the Convention.

The transfer of the power of determining the election, returns and qualifications of the members of the legislature long lodged in the legislative body, to an independent, impartial and non-partisan tribunal, is by no means a mere experiment in the science of government.

Cushing, in his *Law and Practice of Legislative Assemblies* (ninth edition, chapter VI, pages 57, 58), gives a vivid account of the "scandalously notorious" canvassing of votes by political parties in the disposition of contests by the House of Commons in the following passages which are partly quoted by the petitioner in his printed memorandum of March 14, 1936:

"153. From the time when the commons established their right to be the exclusive judges of the elections, returns, and qualifications of their members, until the year 1770, two modes of proceeding prevailed, in the determination of controverted elections, and rights of membership. One of the standing committees appointed at the commencement of each session, was denominated the committee of privileges and elections, whose function was to hear and investigate all questions of this description which might be referred to them, and to report their proceedings, with their opinion thereupon, to the house, from time to time. When an election petition was referred to this committee. they hear? the parties and their witnesses and other evidence, and made a report of all the evidence, together with their opinion thereupon, in the form of resolutions, which were considered and agreed or disagreed to by the house. The other mode of proceeding was by a hearing at the bar of the house itself. When this court was adopted, the case was heard and decided by the house, in substantially the same manner as by a committee. The committee of privileges and elections although a select committee was usually what is called an open one; that is to say, in order to constitute the committee, a quorum of the members named was required to be present, but all the members of the house were at liberty to attend the committee and vote if they pleased.

"154. With the growth of political parties in parliament questions relating to the right of membership gradually assumed a political character; so that for many years previous to the year 1770, controverted elections had been tried and determined by the house of commons, as mere party questions, upon which the strength of contending factions might be tested. Thus, for example, in 1741, Sir Robert Walpole, after repealed attacks upon his government, resigned his office in consequence of an adverse vote upon the Chippenham election. Mr. Hatsell remarks, of the trial of election cases, as conducted under this system, that 'Every principle of decency and justice were notoriously and openly prostituted, from whence the younger part of the house were insensibly, but too successfully, induced to adopt the same licentious conduct in more serious matters, and in questions of higher importance to the public welfare. Mr. George Grenville, a distinguished member of the house of commons, undertook to propose a remedy for the evil, and, on the 7th of March, 1770, obtained the unanimous leave of the house to bring in a bill, 'to regulate the trial of controverted elections, or returns of members to serve in parliament.' In his speech to explain his plan, on the motion for leave, Mr. Grenville alluded to the existing practice in the following terms: 'Instead of trusting to the merits of their respective causes, the principal dependence of both parties is their private interest among us; and it is scandalously notorious that we are as earnestly canvassed to attend in favor of the opposite sides, as if we were wholly self-elective, and not bound to act by the principles of justice, but by the discretionary impulse of our own inclinations; nay, it is well known, that in every contested election, many members of this house, who are ultimately to judge in a kind of judicial capacity between the competitors, enlist themselves as parties in the contention, and take upon themselves the partial management of the very business, upon which they should determine with the strictest impartiality.'

"155. It was to put an end to the practices thus described, that Mr. Grenville brought in a bill which met with the approbation of both houses, and received the royal assent on the 12th of April, 1770. This was the celebrated law since known by the name of the Grenville Act; of which Mr. Hatsell declares, that it *was one of the noblest works, for the honor of the house of commons, and the security of the constitution, that was ever devised by any minister or statesman. It is probable, that the magnitude of the evil, or the apparent success of the remedy, may have led many of the contemporaries of the measure to the information of a judgment, which was not acquiesced in by some of the leading statesmen of the day, and has not been entirely confirmed by subsequent experience. The bill was objected to by Lord North, Mr. De Grey, afterwards chief justice of the common pleas, Mr. Ellis, Mr. Dyson, who had been clerk of the house, and Mr. Charles James Fox, chiefly on the ground, that the introduction of the new system was an essential alteration of the constitution of parliament, and a total abrogation of one of the most important rights and jurisdictions of the house of commons."

As early as 1868, the House of Commons in England solved the problem of insuring the non-partisan settlement of the controverted elections of its members by abdicating its prerogative to two judges of the King's Bench of the High Court of Justice selected from a rota in accordance with rules of court made for the purpose. Having proved successful, the practice has become imbedded in English jurisprudence (Parliamentary Elections Act, 1868 . [31 & 32 Viet. c. 125] as amended by Parliamentary Elections and Corrupt Practices Act, 1879 [42 & 43 Viet. c. 75], s. 2; Corrupt and Illegal Practices Prevention Act, 1883 [46 & 47 Viet. c. 51], s. 70; Expiring Laws Continuance Act, 1911 [1 & 2 Geo. 5, c. 22]; Laws of England, vol. XII, p. 408, vol. XXI, p. 787). In the Dominion of Canada, election contests which were originally heard by the Committee of the House of Commons, are since 1922 tried in the courts. Likewise, in the Commonwealth of Australia, election contests which were originally determined by each house, are since 1922 tried in the High Court. In Hungary, the organic law provides that all protests against the election of members of the Upper House of the Diet are to be resolved by the Supreme Administrative Court (Law 22 of 1916, chap. 2, art. 37, par. 6). The Constitution of Poland of March 17, 1921 (art. 19) and the Constitution, of the Free City of Danzig of May 13, 1922 (art. 10) vest the authority to decide contested elections to the Diet or National Assembly in the Supreme Court. For the purpose of deciding legislative contests, the Constitution of the German Reich of July 1, 1919 {art. 31), the Constitution of the Czechoslovak Republic of February 29, 1920 (art. 19) and the Constitution of the Grecian Republic of June 2, 1927 (art. 43), all provide for an Electoral Commission.

The creation of an Electoral Commission whose membership is recruited both from the legislature and the judiciary is by no means unknown in the United States. In the presidential elections of 1876 there was a dispute as to the number of electoral votes received by each of the two opposing candidates. As the Constitution made no adequate provision for such a contingency, Congress passed a law on January 29, 1877 (United States Statutes at Large, vol. 19, chap. 37, pp. 227-229), creating a special Electoral Commission composed of five members elected by the Senate, five members elected by the House of Representatives, and five justices of the Supreme Court, the fifth justice to be selected by the four designated in the Act. The decision of the commission was to be binding unless rejected by the two houses voting separately. Although there is not much of a moral lesson to be derived from the experience of America in this regard, judging from the observations of Justice Field, who was a member of that body on the part of the Supreme Court (Countryman,, the Supreme Court of the United States and its Appellate Power under the Constitution [Albany, 1913]—Relentless Partisanship of Electoral Commission, p. 25 et seq.)t the experiment has at least abiding historical interest.

The members of the Constitutional Convention who framed our fundamental law were in their majority men mature in years and experience. To be sure, many of them were familiar with the history and political development of other countries of the world. When, therefore, they deemed it wise to create an Electoral Commission as a constitutional organ and invested it with the exclusive function of passing upon and determining the election, returns and qualifications of the members of the National Assembly, they must have done so not only

in the light of their own experience but also having in view the experience of other enlightened peoples of the world. The creation of the Electoral Commission was designed to remedy certain evils of which the framers of our Constitution were cognizant. Notwithstanding the vigorous opposition of some members of the Convention to its creation, the plan, as hereinabove stated, was approved by that body by a vote of 98 against 58. All that can be said now is that, upon the approval of the Constitution, the creation of the Electoral Commission people". (Abraham Lincoln, First Inaugural Address, March 4, 1861.)

From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long-felt need of determining legislative contests devoid of partisan considerations which prompted the people, acting through their delegates to the Convention, to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to off-set partisan influence in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the 'Supreme Court.

The Electoral Commission is a constitutional creation, invested with the necessary authority in the performance and execution of the limited and specific function assigned to it by the Constitution. Although it is not a power in our tripartite scheme of government, it is, to all intents and purposes, when acting within the limits of its authority, an independent organ. It is, to be sure, closer to the legislative department than to any other. The location of the provision (section 4) creating the Electoral Commission under Article VI entitled "Legislative Department" of our Constitution is very indicative. Its composition is also significant in that it is constituted by a majority of members of the legislature. But it is a body separate from and independent of the legislaturer.

The grant of power to the Electoral Commission to judge all contests relating to the election, returns and qualifications of members of the National Assembly, is intended to be as complete and unimpaired as if it had remained originally in the legislature. The express lodging of that power in the Electoral Commission is an implied denial of the exercise of that power by the National Assembly. And this is as effective a restriction upon the legislative power as an express prohibition in the Constitution (Ex parte Lewis, 45 Tex. Crim. Rep., 1; State vs. Whisman, 36 S. D., 260; L. R. A., 1917B, 1). If we concede the power claimed in behalf of the National Assembly that said body may regulate the proceedings of the Electoral Commission and cut off the power of the commission to lay down the period within which protests should be filed, the grant of power to the commission would be ineffective. The Electoral Commission in such case would be invested with the power to determine contested cases involving the election, returns and qualifications of the members of the National Assembly but subject at all times to the regulative power of the National Assembly. Not only would the purpose of the framers of our Constitution of totally transferring this authority from the legislative body be frustrated, but a dual authority would be created with the resultant inevitable clash of powers from time to time. A sad spectacle would then be presented of the Electoral Commission retaining the bare authority of taking cognizance of cases referred to, but in reality without the necessary means to render that authority effective whenever and wherever the National Assembly has chosen to act, a situation worse than that intended to be remedied by the framers of our Constitution. The power to regulate on the part of the National Assembly in procedural matters will inevitably lead to the ultimate control by the Assembly of the entire proceedings of the Electoral Commission, and, by indirection, to the entire abrogation of the constitutional grant. It is obvious that this result should not be permitted.

We are not insensible to the impassioned argument of the learned counsel for the petitioner regarding the importance and necessity of respecting the dignity and independence of the National Assembly as a coordinate

department of the government and of according validity to its acts, to avoid what he characterized would be practically an unlimited power of the commission in the admission of protests against members of the National Assembly. But as we have pointed out hereinabove, the creation of the Electoral Commission carried with it ex necessitate to the power regulative in character to limit the time within which protests intrusted to its cognizance should be filed. It is a settled rule of construction that where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred (Cooley, Constitutional Limitations, eighth ed., vol. I, pp. 138, 139). In the absence of any further constitutional provision relating to the procedure to be followed in filing protests before the Electoral Commission, therefore, the incidental power to promulgate such rules necessary for the proper exercise of its exclusive power to judge all contests relating to the election, returns and Qualifications of members of the National Assembly, must be deemed by necessary implication to have been lodged also in the Electoral Commission.

It is, indeed, possible that, as suggested by counsel for the petitioner, the Electoral Commission may abuse its regulative authority by admitting protests beyond any reasonable time, to the disturbance of the tranquillity and peace of mind of the members of the National Assembly. But the possibility of abuse is not an argument against the concession of the power as there is no power that is not susceptible of abuse. In the second place, if any mistake has been committed in the creation of an Electoral Commission and in investing it with exclusive jurisdiction in all cases relating to the election, returns, and qualifications of members of the National Assembly, the remedy is political, not judicial, and must be sought through the ordinary processes of democracy. All the possible abuses of the government are not intended to be corrected by the judiciary. We believe, however, that the people in creating the Electoral Commission reposed as much confidence in this body in the exclusive determination of the specified cases assigned to it, as they have given to the Supreme Court in the proper cases entrusted to it for decision. All the agencies of the government were designed by the Constitution to achieve specific purposes, and each constitutional organ working within its own particular sphere of discretionary action must be deemed to be animated with the same zeal and honesty in accomplishing the great ends for which they were created by the sovereign will. That the actuations of these constitutional agencies might leave much to be desired in given instances, is inherent in the imperfections of human institutions. In the third place, from the fact that the Electoral Commission may not be interfered with in the exercise of its legitimate power, it does not follow that its acts, however illegal or unconstitutional, may not be challenged in appropriate cases over which the courts may exercise jurisdiction.

But independently of the legal and constitutional aspects of the present case, there are considerations of equitable character that should not be overlooked in the appreciation of the intrinsic merits of the controversy. The Commonwealth Government was inaugurated on November 15, 1935, on which date the Constitution, except as to the provisions mentioned in section 6 of Article XV thereof, went into effect. The new National Assembly convened on November 25th of that year, and the resolution confirming the election of the petitioner, Jose A. Angara, was approved by that body on December 3, 1935. The protest by the herein respondent Pedro Ynsua against the election of the petitioner was filed on December 9 of the same year. The pleadings do not show when the Electoral Commission was formally organized but it does appear that on December 9, 1935, the Electoral Commission met for the first time and approved a resolution fixing said date as the last day for the filing of election protests. When, therefore, the National Assembly passed its resolution of December 3, 1935, confirming the election of the petitioner to the National Assembly, the Electoral Commission had not yet met; neither does it appear that said body had actually been organized. As a matter of fact, according to certified copies of official records on file in the archives division of the National Assembly attached to the record of this case upon the petition of the petitioner, the three justices of the Supreme Court and the six members of the National Assembly constituting the Electoral Commission were respectively designated only on December 4 and 6, 1935. If

Resolution No. 8 of the National Assembly confirming non-protested elections of members of the National Assembly had the effect of limiting or tolling the time for the presentation of protests, the result would be that the National Assembly—on the hypothesis that it still retained the incidental power of regulation in such cases—had already barred the presentation of protests before the Electoral Commission had had time to organize itself and deliberate on the mode and method to be followed in a matter entrusted to its exclusive jurisdiction by the Constitution. This result was not and could not have been contemplated, and should be avoided.

From another angle, Resolution No. 8 of the National Assembly confirming the election of members against whom no protests had been filed at the time of its passage on December 3, 1935, can not be construed as a limitation upon the time for the initiation of election contests. While there might have been good reason for the legislative practice of confirmation of the election of members of the legislature at the time when the power to decide election contests was still lodged in the legislature, confirmation alone by the legislature cannot be construed as depriving the Electoral Commission of the authority incidental to its constitutional power to be "the sole judge of all contests relating to the election, returns, and qualifications of the members of the National Assembly", to fix the time for the filing of said election protests. Confirmation by the National Assembly of the returns of its members against whose election no protests have been filed is, to all legal purposes, unnecessary. As contended by the Electoral Commission in its resolution of January 23, 1936, overruling the motion of the herein petitioner to dismiss the protest filed by the respondent Pedro Ynsua, confirmation of the election of any member is not required by the Constitution before he can discharge his duties as such member. As a matter of fact, certification by the proper provincial board of canvassers is sufficient to entitle a member-elect to a seat in the National Assembly and to render him eligible to any office in said body (No. 1, par. 1, Rules of the National Assembly, adopted December 6, 1935).

Under the practice prevailing both in the English House of Commons and in the Congress of the United States, confirmation is neither necessary in order to entitle a member-elect to take his seat. The return of the proper election officers is sufficient, and the member-elect presenting such return begins to enjoy the privileges of a member from the time that he takes his oath of office (Laws of England, vol. 12, pp. 331, 332; vol. 21, pp. 694, 695; U. S. C. A., Title 2, sees. 21, 25, 26). Confirmation is in order only in cases of contested elections where the decision is adverse to the claims of the protestant. In England, the judges' decision or report in controverted elections is certified to the Speaker of the House of Commons, and the House, upon being informed of such certificate or report by the Speaker, is required to enter the same upon the Journals, and to give such directions for confirming or altering the return, or for the issue of a writ for a new election, or for carrying into execution the determination as circumstances may require (31 & 32 Viet., c. 125, sec. 13). In the United States, it is believed, the order or decision of the particular house itself is generally regarded as sufficient, without any actual alteration or amendment of the return (Cushing, Law and Practice of Legislative Assemblies, 9th ed., sec. 166).

Under the practice prevailing when the Jones Law was still in force, each house of the Philippine Legislature fixed the time when protests against the election of any of its members should be filed. This was expressly authorized by section 18 of the Jones Law making each house the sole judge of the election, returns and qualifications of its members, as well as by a law (sec. 478, Act No. 3387) empowering each house to respectively prescribe by resolution the time and manner of filing contest in the election of members of said bodies. As a matter of formality, after the time fixed by its rules' for the filing of protests had already expired, each house passed a resolution confirming or approving the returns of such members against whose election no protests had been filed within the prescribed time. This was interpreted as cutting off the filing of further protests against the election of those members not theretofore contested (*Amistad vs. Claravall* [Isabela], Second Philippine Legislature, Record—First Period, p. 89; *Urgello vs. Rama* [Third District, Cebu], Sixth Philippine Legislature; *Fetalvero vs. Festin* [Romblon], Sixth Philippine Legislature, Record—First Period, pp. 637-640; *Eintanar vs.*

Aldanese [Fourth District, Cebu], Sixth Philippine Legislature, Record—First Period, pp. 1121, 1122; Aguilar vs. Corpus [Masbate], Eighth Philippine Legislature, Record—First Period, vol. III, No. 56, pp. 892, 893). The Constitution has repealed section 18 of the Jones Law. Act No. 3387, section 478, must be deemed to have been impliedly abrogated also, for the reason that with the power to determine all contests relating to the election, returns and qualifications of members of the National Assembly, is inseparably linked the authority to prescribe regulations for the exercise of that power. There was thus no law nor constitutional provision which authorized the National Assembly to fix, as it is alleged to have fixed on December 3, 1935, the time for the filing of contests against the election of its members. And what the National Assembly could not do directly, it could not do by indirection through the medium of confirmation.

Summarizing, we conclude:

- (a) That the government established by the Constitution follows fundamentally the theory of separation of powers into the legislative, the executive and the judicial.
- (b) That the system of checks and balances and the over-lapping of functions and duties often makes difficult the delimitation of the powers granted.
- (c) That in cases of conflict between the several departments and among the agencies thereof, the judiciary, with the Supreme Court as the final arbiter, is the only constitutional mechanism devised finally to resolve the conflict and allocate constitutional boundaries.
- (d) That judicial supremacy is but the power of judicial review in actual and appropriate cases and controversies, and is the power and duty to see that no one branch or agency of the government transcends the Constitution, which is the source of all authority.
- (e) That the Electoral Commission is an independent constitutional creation with specific powers and functions to execute and perform, closer for purposes of classification to the legislative than to any of the other two departments of the government.
- (f) That the Electoral Commission is the sole judge of all contests relating to the election, returns and qualifications of members of the National Assembly.
- (g) That under the organic law prevailing before the present Constitution went into effect, each house of the legislature was respectively the sole judge of the elections, returns, and qualifications of their elective members.
- (h) That the present Constitution has transferred all the powers previously exercised by the legislature with respect to contests relating to the election, returns and qualifications of its members, to the Electoral Commission.
- (i) That such transfer of power from the legislature to the Electoral Commission was full, clear and complete, and carried with it *ex necessitate rei* the implied power *inter alia* to prescribe the rules and regulations as to the time and manner of filing protests.
- (j) That the avowed purpose in creating the Electoral Commission was to have an independent constitutional organ pass upon all contests relating to the election, returns and qualifications of members of the National Assembly, devoid of partisan influence or consideration, which object would be frustrated if the National Assembly were to retain the power to prescribe rules and regulations regarding the manner of conducting said contests.
- (k) That section 4 of article VI of the Constitution repealed not only section 18 of the Jones Law making each house of the Philippine Legislature respectively the sole judge of the elections, returns and qualifications of its elective members, but also section 478 of Act No. 3387 empowering each house to prescribe by resolution

the time and manner of filing contests against the election of its members, the time and manner of notifying the adverse party, and bond or bonds, to be required, if any, and to fix the costs and expenses of contest.

(l) That confirmation by the National Assembly of the election of any member, irrespective of whether his election is contested or not, is not essential before such member-elect may discharge the duties and enjoy the privileges of a member of the National Assembly.

(m) That confirmation by the National Assembly of the election of any member against whom no protest had been filed prior to said confirmation, does not and cannot deprive the Electoral Commission of its incidental power to prescribe the time within which protests against the election of any member of the National Assembly should be filed.

We hold, therefore, that the Electoral Commission was acting within the legitimate exercise of its constitutional prerogative in assuming to take cognizance of the protest filed by the respondent Pedro Ynsua against the election of the herein petitioner Jose A. Angara, and that the resolution of the National Assembly of December 3, 1935 can not in any manner toll the time for filing protests against the election, returns and qualifications of members of the National Assembly, nor prevent the filing of a protest within such time as the rules of the Electoral Commission might prescribe.

In view of the conclusion reached by us relative to the character of the Electoral Commission as a constitutional creation and as to the scope and extent of its authority under the facts of the present controversy, we deem it unnecessary to determine whether the Electoral Commission is an inferior tribunal, corporation, board or person within the purview of sections 226 and 516 of the Code of Civil Procedure.

The petition for a writ of prohibition against the Electoral Commission is hereby denied, with costs against the petitioner. So ordered.

Avanceña, C. J., Diaz, Conception, and Arellano, JJ., concur.

CONCURRING

ABAD SANTOS, J.:

I concur in the result and in most of the views so ably expressed in the preceding opinion. I am, however, constrained to withhold my assent to certain conclusions therein advanced.

The power vested in the Electoral Commission by the Constitution of judging of all contests relating to the election, returns, and qualifications of the members of the National Assembly, is judicial in nature. (Thomas vs. Loney, 134 U. S., 372; 33 Law. ed. 949, 951.) On the other hand, the power to regulate the time in which notice of a contested election may be given, is legislative in character. (M'Elmoyle vs. Cohen, 13 Pet., 312; 10 Law. ed., 1,77; Missouri vs. Illinois, 200 U. S., 496; 50 Law. ed., 572.)

It has been correctly stated that the government established by the Constitution follows fundamentally the theory of the separation of powers into legislative, executive, and judicial. Legislative power is vested 'in the National Assembly. (Article VI, sec. 1.) In the absence of any clear constitutional provision to the contrary, the power to regulate the time in which notice of a contested election may be given, must be deemed to be included in the grant of legislative power to the National Assembly.

The Constitution of the United States contains a provision similar to that found in Article VI, section 4, of the Constitution of the Philippines. Article I, section 5, of the Constitution of the United States provides that each house of the Congress shall be the judge of the elections, returns, and qualifications of its own members.

Notwithstanding this provision, the Congress has assumed the power to regulate the time in which notice of a contested election may be given. Thus section 201, Title 2, of the United States Code Annotated prescribes:

"Whenever any person intends to contest an election of any Member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the Member whose seat he designs to contest, of his intention to contest the same, and, in such notice, shall specify particularly the grounds upon which he relies in the contest." (R. S., par. 105.)

The Philippine Autonomy Act, otherwise known as the Jones Law, also contained a provision to the effect that the Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members. Notwithstanding this provision, the Philippine Legislature passed the Election Law, section 478 of which reads as follows:

"The Senate and the House of Representatives shall by resolution respectively prescribe the time and manner of filing contest in the election of members of said bodies, the time and manner of notifying the adverse party, and bond or bonds, to be required, if any, and shall fix the costs and expenses of contest which may be paid from their respective funds."

The purpose sought to be attained by the creation of the Electoral Commission was not to erect a body that would be above the law, but to raise legislative election contests from the category of political to that of justiciable questions. The purpose was not to place the commission beyond the reach of the law, but to insure the determination of such contests with due process of law.

Section 478 of the Election Law was in force at the time of the adoption of the Constitution, Article XV, section 2, of which provides that—

"All laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines ; thereafter, such laws shall remain operative, unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the National Assembly, and all references in such laws to the Government or officials of the Philippine Islands shall be construed, in so far as applicable, to refer to the Government and corresponding officials under this Constitution."

The manifest purpose of this constitutional provision was to insure the orderly processes of government, and to prevent any hiatus in its operation after the inauguration of the Commonwealth of the Philippines. It was thus provided that all laws of the Philippine Islands shall remain operative even after the inauguration of the Commonwealth of the Philippines, unless inconsistent with the Constitution, and that all references in such laws to the government or officials of the Philippine Islands shall be construed, in so far as applicable, to refer to the government and corresponding officials under the Constitution. It would seem to be consistent not only with the spirit but with the letter of the Constitution to hold that section 478 of the Election Law remains operative and should now be construed to refer to the Electoral Commission, which, in so far as the power to judge election contests is concerned, corresponds to either the Senate or the House of Representatives under the former regime. It is important to observe in this connection that said section 478 of the Election Law vested the power to regulate the time and manner in which notice of a contested election may be given, not in the Philippine Legislature but in the Senate and House of Representatives singly. In other words, the authority to prescribe the time and manner of filing contests in the election of members of the Philippine Legislature was by statute lodged separately in the bodies clothed with power to decide such contests. Construing section 478 of the Election Law to refer to the National Assembly, as required by Article XV, section 2, of the Constitution, it seems reasonable to conclude that the authority to prescribe the time and manner of filing contests in the election of members of the National Assembly is vested in the Electoral Commission, which is now the body clothed with power to decide such

contests.

In the light of what has been said, the resolution of the National Assembly of December 3, 1935, could not have the effect of barring the right of the respondent Pedro Ynsua to contest the election of the petitioner. By the same token, the Electoral Commission was authorized by law to adopt its resolution of December 9, 1935, which fixed the time within which written contests must be filed with the commission.

Having been filed within the time fixed by its resolution, the Electoral Commission has jurisdiction to hear and determine the contest filed by the respondent Pedro Ynsua against the petitioner Jose A. Angara. Writ denied.

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