

JOSE D. VILLENA, PETITIONER, VS. THE SECRETARY OF THE INTERIOR, RESPONDENT.*G.R. No. 46570. April 21, 1939*

Ponente: LAUREL, J.

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This is an original action of prohibition with prayer for preliminary injunction against the Secretary of the Interior to restrain him and his agents from proceeding with the investigation of the herein petitioner, Jose D. Villena, mayor of Makati, Rizal, which was scheduled to take place on March 28, 1939, until this case is finally determined by this court. The respondent was required to answer, but the petition for preliminary injunction was denied.

It appears that the Division of Investigation of the Department of Justice, upon the request of the Secretary of the Interior, conducted an inquiry into the conduct of the petitioner, as a result of which the latter was found to have committed bribery, extortion, malicious abuse of authority and unauthorized practice of the law profession. The respondent, therefore, on February 8, 1939, recommended to the President of the Philippines the suspension of the petitioner to prevent possible coercion of witnesses, which recommendation was granted, according to the answer of the Solicitor-General of March 20, 1939, verbally by the President on the same day. The Secretary of the Interior suspended the petitioner from office on February 9, 1939, and then and thereafter wired the Provincial Governor of Rizal with instruction that the petitioner be advised accordingly. On February 13, 1939, the respondent wrote the petitioner a letter, specifying the many charges against him and notifying him of the designation of Emiliano Anonas as special investigator to investigate the charges. The special investigator forthwith notified the petitioner that the formal investigation would be commenced on February 17, 1939, at 9 a. m., but due to several incidents and postponements, the same had to be set definitely for March 28, 1939. Hence, the petition for preliminary injunction referred to in the beginning of this opinion.

The petitioner contends in his petition:

"(1) That the Secretary of the Interior has no jurisdiction or authority to suspend and much less to prefer by himself administrative charges against the petitioner and decide also by himself the merits of the charges as the power to suspend municipal elective officials and to try and punish them for misconduct in office or dereliction of duty is lodged in some other agencies of the government;

"(2) That the acts of the respondent in suspending the petitioner from office and in preferring by himself charges against him and in designating a special investigator to hear the charges specified in Exhibit A are null and void for the following reasons:

" (a) Because the Secretary of the Interior, by suspending the petitioner, has exercised control over local governments when that power has been taken away from the President of the Philippines by the Constitution for the to abrogate and the power to abrogate means the power to power to control has been interpreted to include the power usurp and the power to usurp necessarily includes the power

to destroy;

"(b) Because even if the respondent Secretary of the Interior has power of supervision over local governments, that power, according to the constitution, must be exercised in accordance with the provisions of law and the provisions of law governing trials of charges against elective municipal officials are those contained in section 2188 of the Administrative Code as amended. In other words, the Secretary of the Interior must exercise his supervision over local governments, if he has that power under existing law, in accordance with section 2188 of the Administrative Code, as amended, as the latter provisions govern the procedure to be followed in suspending and punishing elective local officials while section 79 (C) of the Administrative Code is the general law which must yield to the special law;

"(c) Because the respondent Secretary of the Interior is exercising an arbitrary power by converting himself into a complainant and at the same time judge of the charges he has preferred against the petitioner;

"(d) Because the action of the respondent Secretary of the Interior is not based on any sworn statement of any private person or citizen of this government when section 2188 of the Administrative Code requires the complaint against elective municipal officials to be under oath in order to merit consideration by the authorities."

Petitioner prays this Honorable Court:

"(a) To issue a writ of preliminary injunction against the respondent restraining him, his agents, attorneys and all persons acting by virtue of his authority from further proceeding against the petitioner until this case is finally determined by this court;

"(b) To declare, after the hearing of this petition, that the respondent is without authority or jurisdiction to suspend the petitioner from the office of mayor of Makati and to order his immediate reinstatement in office;

"(c) To declare that the respondent has no authority to prefer charges against the petitioner and to investigate those charges for to grant him that power the respondent would be acting as prosecutor and judge of the case of his own creation."

Upon the other hand, the Solicitor-General contends in his answer:

"1. That section 79 (C) in relation with section 86 of the Revised Administrative Code expressly empowers the respondent as Secretary of the Interior to "order the investigation of any act or conduct of any person in the service of any bureau or office under his department" and in connection therewith to 'designate an official or person who shall conduct such investigation'; (Par. 4.)

"2. That although section 2188 of the Revised Administrative Code, invoked by the petitioner, empowers the provincial governor to 'receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office', said section does not preclude the respondent as Secretary of the Interior from exercising the power vested in him by section 79 (C) in relation with section 86 of the Revised Administrative Code; and that, moreover, said section 2188 must be read in relation with section 37 of Act No. 4007, known as the Reorganization Law of 1932; (Par. 4 [6].)

"3. That at the commencement of the investigation the petitioner did not question the power or jurisdiction of the Department of the Interior to investigate the administrative charges against him but merely contended that the filing of said charges was not in accordance with law for the reason that they did not bear the oaths of the complainants; (Par. 5.)

"4. That the authority of a department head to order the investigation of any act or conduct of any person under his department necessarily carries with it by implication the authority to take such measures as he may deem necessary to accomplish the purpose of the investigation, such as by suspending the officer under investigation

to prevent coercion of witnesses; and that, furthermore, the suspension from office of the herein petitioner by the respondent was authorized by the Chief Executive, who is empowered by section 64 (B) of the Administrative Code to remove officials from office; (Par. 7.)

"5. That the petition does not allege facts and circumstances that would warrant the granting of the writ of preliminary injunction under section 164 of the Code of Civil Procedure; (Par. 8.)

"6. That it is a well-settled rule 'that courts of equity have no power to restrain public officers by injunction from performing any official act which they are by law required to perform, or acts which are not in excess of the authority and discretion reposed in them.' (Par. 9.)"

The issues presented in this case may be reduced to an inquiry into the legal authority of the Secretary of the Interior (a) to order an investigation, by a special investigator appointed by him, of the charges of corruption and irregularity brought to his attention against the mayor of the municipality of Makati, Province of Rizal, who is the petitioner herein, and (b) to decree the suspension of the said mayor pending the investigation of the charges.

Section 79 (C) of the Administrative Code provides as follows:

"The Department Head shall have direct control, direction, and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decision of the chiefs of said bureaus or offices when advisable in the public interest.

"The Department Head may order the investigation of any act or conduct of any person in the service of any bureau or office under his department and in connection therewith may appoint a committee or designate an official or person who shall conduct such investigations, and such committee, official, or person may summon, witness by subpoena and subpoena duces tecum, administer oath and take testimony relevant to the investigation."

The above section speaks, it is true, of direct control, direction, and supervision over bureaus and offices under the jurisdiction of the Secretary of the Interior, but this section should be interpreted in relation to section 86 of the same Code which grants to the Department of the Interior "executive supervision over the administration of provinces, municipalities, chartered cities and other local political subdivisions." In the case of *Planas vs. Gil* (37 Off. Gaz., 1228), we observed that "Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective. If supervision is to be conscientious and rational, and not automatic and brutal, it must be founded upon a knowledge of actual facts and conditions disclosed after careful study and investigation." The principle there enunciated is applicable with equal force to the present case.

We hold, therefore, that the Secretary of the Interior is invested with authority to order the investigation of the charges against the petitioner and to appoint a special investigator for that purpose.

As regards the challenged power of the Secretary of the Interior to decree the suspension of the herein petitioner pending an administrative investigation of the charges against him, the question, it may be admitted, is not free from difficulties. There is no clear and express grant of power to the secretary to suspend a mayor of a municipality who is under investigation. On the contrary, the power appears lodged in the provincial governor by section 2188 of the Administrative Code which provides that "The provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency he may reprimand the offender; and if a more severe punishment seems to be desirable he shall submit written charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not

being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected, the written charges against the officer shall be filed with the board within five days." The fact, however, that the power of suspension is expressly granted by section 2188 of the Administrative Code to the provincial governor does not mean that the grant is necessarily exclusive and precludes the Secretary of the Interior from exercising a similar power. For instance, counsel for the petitioner admitted in the oral argument that the President of the Philippines may himself suspend the petitioner from office in virtue of his greater power of removal (sec. 2191, (as amended, Administrative Code) to be exercised conformably to law. Indeed, if the President could, in the manner prescribed by law, remove a municipal official, it would be a legal incongruity if he were to be devoid of the lesser power of suspension. And the incongruity would be more patent if, possessed of the power both to suspend and to remove a provincial official (sec. 2078, Administrative Code), the President were to be without the power to suspend a municipal official. Here is, parenthetically, an instance where, as counsel for petitioner admitted, the power to suspend a municipal official is not exclusive. Upon the other hand, it may be argued with some degree of plausibility that, if the Secretary of the Interior is, as we have hereinabove concluded, empowered to investigate the charges against the petitioner and to appoint a special investigator for that purpose, preventive suspension may be a means by which to carry into effect a fair and impartial investigation. This is a point, however, which, for the reason hereinafter indicated, we do not have to decide.

The Solicitor-General argues that section 37 of Act No. 4007, known as the Reorganization Law of 1932, by providing, "the provisions of the existing law to the contrary notwithstanding," that "whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division or service", should be interpreted to concede to the Secretary of the Interior the power to suspend a mayor of a municipality. 7The argument is so generally sweeping that, unless distinctions are made, the effect would be the complete abrogation at will of the powers of provincial and municipal officials even in corporate affairs of local governments. Under the theory suggested by the Solicitor-General, the Secretary of the Interior could, as observed by able counsel for the petitioner, enter into a contract and sign a deed of conveyance of real property in behalf of a municipality against the opposition of the mayor thereof who is the local official authorized by law to do so (sec. 2196, Revised Administrative Code), or in behalf of a province in lieu of the provincial governor thereof (sec. 2068, Ibid.), and otherwise exercise powers of corporate character mentioned in sections 2067 and 2175 of the Revised Administrative Code and which are lodged in the corresponding provincial and municipal officials. And if the power of suspension of the Secretary of the Interior is to be justified on the plea that the pretended power is governmental and not corporate, the result would be more disastrous. Then and thereunder, the Secretary of the Interior, in lieu of the mayor of the municipality, could directly veto municipal ordinances and resolutions under section 2229 of the Revised Administrative Code; he could, without any formality, elbow aside the municipal mayor and himself make appointments to all non-elective positions in the municipal service, under section 2199 of the Revised Administrative Code; he could, instead of the provincial governor, fill a temporary vacancy in any municipal office under subsection (a), section 2188, as amended, of the said Code; he could even directly appoint lieutenants of barrios and wrest the authority given by section 2218 of the Revised Administrative Code to a municipal councilor. Instances may be multiplied but it is unnecessary to go any further. Prudence, then, dictates that we should hesitate to accept the suggestion urged upon us by the Solicitor-General, especially where we find the path indicated by him neither illumined by the light of our own experience nor cemented by the virtuality of legal principles but is, on the contrary, dimmed by the recognition however limited in our own Constitution of the right of local self-government and by the actual operation and enforcement of the laws governing provinces, chartered cities, municipalities and other political subdivisions. It is not any question of

wisdom of legislation but the existence of any such destructive authority in the law invoked by the Government that we are called upon to pass and determine here.

In the deliberation of this case it has also been suggested that, admitting that the President of the Philippines is invested with the authority to suspend the petitioner, and it appearing that he had verbally approved or at least acquiesced in the action taken by the Secretary of the Interior, the suspension of the petitioner should be sustained on the principle of approval or ratification of the act of the Secretary of the Interior by the President of the Philippines. There is, to be sure, more weight in this argument than in the suggested generalization of section 37 of Act No. 4007. Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain prerogative acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of habeas corpus and proclaim martial law (par. 3, sec. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, sec. 11, idem). Upon the other hand, doubt is entertained by some members of the court whether the statement made by the Secretary to the President in the latter's behalf and by his authority that the President had no objection to the suspension of the petitioner could be accepted as an affirmative exercise of the power of suspension in this case, or that the verbal approval by the President of the suspension alleged in a pleading presented in this case by the Solicitor-General could be considered as a sufficient ratification in law.

After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the Exigencies of the situation" demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (*Runkle vs. United States* [1887], 122 U. S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also *U. S. vs. Eliason* [1839j, 16 Pet, 291; 10 Law. ed., 968; *Jones vs. V. S.* [1890], 137 U. S., 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; *Wolsey vs. Chapman* [1880], 101 U. S., 755; 25 Law. ed.f 915; *Wilcox vs. Jackson* [1836], 13 Pet, 498; 10 Law. ed., 264.)

Fear is expressed by more than one member of this court that the acceptance of the principle of qualified political agency in this and similar cases would result in the assumption of responsibility by the President of the Philippines for acts of any member of his cabinet, however illegal, irregular or improper may be these acts. The implications, it is said, are serious. Fear, however, is no valid argument against the system once adopted, established and operated. Familiarity with the essential background of the type of government established under our Constitution, in the light of certain well-known principles and practices that go with the system, should offer the necessary explanation With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions

and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority" (Myers vs. United States, 47 Sup. Ct. Rep., 21 at 30; 272 U. S., 52 at 133; 71 Law. ed., 160). Secretaries of departments, of course, exercise certain powers under the law but the law cannot impair or in any way affect the constitutional power of control and direction of the President. As a matter of executive policy, they may be granted departmental autonomy as to certain matters but this is by mere concession of the executive, in the absence of valid legislation in the particular field. If the President, then, is the authority in the Executive Department, he assumes the corresponding responsibility. The head of a department is a man of his confidence; he controls and directs his acts; he appoints him and can remove him at pleasure; he is the executive, not any of his secretaries. It is therefore logical that he, the President, should be answerable for the acts of administration of the entire Executive Department before his own conscience no less than before that undefined power of public opinion which, the language of Daniel Webster, is the last repository of popular government. These are the necessary corollaries of the American presidential type of government, and if there is any defect, it is attributable to the system itself. We cannot modify the system unless we modify the Constitution, and we cannot modify the Constitution by any subtle process of judicial interpretation or construction.

The petition is hereby dismissed, with costs against the petitioner. So ordered.

Avanceña, C. J., Diaz, and Concepcion, JJ., concur.

Villa-Real, J., concurs in the result. See concurring opinion

Imperial, and Moran, JJ., see concurring and dissenting opinion

CONCURRING OPINION

VILLA-REAL, J.:

I concur in the result. The Secretary of the Interior is nowhere given the power to suspend a municipal elective officer pending charges, and in the absence of such power he may not suspend him. The power to suspend cannot be implied even from an arbitrary power to remove, except where the power to remove is limited to cause; in such case, the power to suspend, made use of as a disciplinary power pending charges, is regarded as included within the power of removal (46 Corpus Juris, sec. 142, page 982). Provincial governors alone are expressly empowered to suspend municipal officers under certain conditions by section 2188 of the Revised Administrative Code, and the President of the Philippines Joy section 2191, as amended, of the same Code. Though the suspension of the petitioner by the Secretary of the Interior was unauthorized, the implied approval by the President of the Philippines validated such suspension.

CONCURRING AND DISSENTING OPINION

IMPERIAL, J.:

I concur in the result because in my opinion (1) the President of the Philippines, under sections 64 (b), and 2191 of the Revised Administrative Code, as the latter has been amended, and section 11 (1), Article VII, of the Constitution, is vested with the power to expel and suspend municipal officials for grave misconduct, and it appears that the suspension was ordered by virtue of that authority; and (2) the Secretary of the Interior acted within the powers conferred upon him by section 79 (C), in connection with section 86, of the Revised Administrative Code, as amended, in ordering an administrative investigation of the charges against the petitioner, in his capacity as mayor of the municipality of Makati, Province of Rizal.

It is a fact that, as a result of the investigation conducted by the Division of Investigation of the Department of Justice, the respondent, in turn, ordered the administrative investigation of the petitioner and recommend his temporary suspension to the President of the Philippines to preclude him from exerting pressure upon the witnesses who would testify in the investigation, and that the President of the Philippines, through Secretary Jorge B. Vargas, stated that he had no objection to the suspension. The act of the President of the Philippines, in my opinion, was an exercise of his power to suspend the petitioner and the statement that he had no objection was, at bottom, an order of suspension. The circumstance that in the communication which the respondent addressed to the petitioner it appeared as though the suspension had been ordered by him, is immaterial and does not alter the merits of the case, as the facts disclose that the order of suspension came directly from the President of the Philippines.

However, I dissent from the conclusion of the majority that, under the existing presidential system of government and in view of the fact that the department secretaries are, in the last analysis, agents of the executive, the acts of the said officials are presumptively deemed the acts of the executive and that, consequently, the suspension of the petitioner directed by the respondent should be considered, under the same theory, as the suspension decreed by the President of the Philippines. I believe that the principle thus enunciated is at once dangerous and without legal sanction. Under the law each of these officials has his own powers and duties and I doubt seriously if it has ever been the intention of the legislature to confuse their duties and prerogatives, for otherwise it would be difficult, if not impossible, to limit and fix responsibility. The respondent himself could not have so understood the law when, under the facts, in order to suspend the petitioner he found it necessary to obtain the express authority of the President of the Philippines.

CONCURRING AND DISSENTING OPINION**MORAN, J.:**

I concur in the result.

The ratio decidendi of the case is contained in the following paragraph of the majority decision:

"* * *, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. * * *"

If by this proposition it is meant that the power of suspension residing in the President may validly be exercised by the Secretary of the Interior in his own name, and his act, unless disapproved or reprobated by the President, is presumptively the act of the President, I disagree. The implications involved in the proposition are serious. Suppose the Secretary of Justice, pending proceedings against a judge of first instance, suspends him temporarily, a power vested in the President (section 173, Adm. Code), is the suspension valid in the silence of the President? Suppose the Secretary of Public Works and Communications removes the Director of Posts, is the removal the act of the President if not disapproved by the latter? Suppose the Secretary of the Interior grants conditional pardon to a prisoner, is the pardon valid unless reprobated by the President? The answers are self-evident.

It is true that the majority decision makes exception of the powers which the Chief Executive, by Constitution, by law, or by the exigencies of the situation, should exercise in person. The distinction, however, thus sought to be established between the powers which the President should exercise in person and those which he may exercise thru the department secretaries, if it exists at all, is extremely shadowy and in fact can nowhere be found in the Constitution, in the law or practices of administration. On the contrary, the weight of wisdom and authority is that powers committed or intrusted by the Constitution or by law to the President must be exercised by him positively and in person. The only functions of the President which, in my opinion, may be performed by the department secretaries are those which are preliminary or preparatory to the exercise of his powers, such as, investigation, research and other inquiries which may be necessary for a wise and judicious exercise of his judgment or discretion. This opinion finds corroboration in section 79-A of the Administrative Code.

The proposition contained in the majority decision is even of much wider scope than is above stated, for it conveys the idea that all the functions of the executive branch of the government are in the President, with the executive departments as mere adjuncts to him and the department secretaries his mere assistants or agents with no authority, function or responsibility of their own, except those emanating from the President, and that, therefore, as they cannot act but at the will of the President, all their acts, unless disapproved or reprobated by the President, are presumptively the acts of the President. This sweeping statement is undoubtedly inspired by section 1, Article VII, of the Constitution, which provides that "the executive power shall be vested in a President of the Philippines." It disregards, however, the true meaning of other provisions of the Constitution, such as paragraph 1 of section 12 of the same Article, which provides that "the executive departments of the present Government of the Philippine Islands shall continue as now authorized by law until the National Assembly shall provide otherwise." (Underscore mine.)

According to section 74 of the Administrative Code "* * * the departments are established for the proper distribution of the work of the executive, for the performance of the functions expressly assigned to them by law, and in order that each branch of the administration may have a chief responsible for its direction and policy." (Underscore mine.) To give effect to this provision, each department head is expressly vested with broad as well as specific powers commensurate with his responsibility, such as, the power to "* * * promulgate, whenever he may see fit to do so, all rules, regulations, orders, circulars, * * * necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction "of said department" (section 79-B, Adm. Code); the power of direction and supervision over such bureaus and offices under his jurisdiction, and to repeal or modify the decisions of the chief of said bureaus or offices when advisable in the public interest (section 79-C, Adm. Code; section 37, Act No. 4007); the power to appoint subordinate officers and employees whose appointment is not expressly vested by law in the President, and to remove and punish them except as specially provided otherwise in accordance with the Civil Service Law (section 79-D, Adm. Code), etc All these powers are continued in force by the Constitution.

Thus, while in one provision the Constitution vests in the President of the Philippines the executive power of the government, in another the same Constitution recognizes the powers of the department secretaries conferred upon them by law. The apparent conflict between the two provisions is reconciled by the Constitution itself by means of the power of control vested in the President over the executive departments. That power of control could not have been intended to wipe out or supersede all the powers of the department secretaries, for, otherwise, those powers would not have been continued in force by the Constitution. It would certainly be an absurdity in the Constitution to recognize and at the same time abrogate those powers. On the contrary, the creation of the power of control implies the preservation, not the destruction, of all the powers conferred by law upon the department secretaries. In fact, the majority admits the existence of those powers, subject, of course, to the power of control of the President. Now, the power of control may or may not be exercised. If not exercised, the acts of the department secretaries in pursuance of their powers would remain in full force and effect, and are their own acts and not the President's. If exercised, by way of disapproval or reprobation of the acts of the department secretaries, the acts so reprobated are still their acts and not the President's.

There is more theory than law in the statement that the personality of the department secretaries is but the projection of that of the President. There is more truth in the language used by Chief Justice Tait, as quoted in the majority opinion, to the effect that 'each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority' (underscore mine). For it is only when the President exercises his authority and powers that the department secretaries act merely as his assistants, agents or advisers, and, in such cases, their acts are his. But when they act in accordance with the powers vested in them by law, they act with a personality separate from and no less distinct than that of the President himself, if the recognition accorded to their powers by the Constitution is to mean anything at all. And the fact that the government we have instituted is a presidential one in no wise destroys what the law has created and the Constitution has recognized. The presidential system of government could not have been intended to supersede a government of laws for a government of men.

If, as stated by the majority, all the official acts of the secretaries of the departments are presumptively the acts of the President, it must follow that the President is presumptively responsible therefor. That this corollary proposition cannot be maintained is obvious. At every instance, he would be called upon to accountability for acts of which he might not have any knowledge at all and for which he could in no wise be held responsible. In the complicated activities of each department, multifarious official acts have to be performed from time to time. Very often these acts are performed in pursuance of powers and duties expressly lodged in them by law; and, occasionally, upon authority and direction of the President in the latter's exercise of his power of control. In the performance of such acts, executive and administrative discretion had to be exercised for which responsibility must accordingly be exclusive and purely personal. To hold the President presumptively responsible for such acts would suggest, in effect, the necessity on the part of the President to exercise constant and unrelaxing vigilance over all the official acts of the secretaries of the departments, under hazard of being involved in endless difficulties, the manifold exigencies of government render such a suggestion inconceivable.

My view, therefore, is that the department secretaries may act in a purely advisory capacity or under the direction and authority of the President in the latter's exercise of his constitutional power of control, and, in such cases, the proposition contained in the majority decision applies, because, then, the department secretaries act purely for the Chief Executive. However, they may also act in pursuance of the powers and duties conferred upon them by law and continued in force by the Constitution, and, unless the president desires to intervene, in appropriate cases, by interposing his constitutional power of control, the acts of the department secretaries are exclusively their own, and they are likewise exclusively responsible therefor. It follows that when a department secretary acts in his own name and not by order or authority of the President, he is presumed to be so acting in pursuance of a power

conferred upon him by law, and when the power is not thus conferred, his act is null and void. And if the power is conferred expressly upon the President, he must exercise it positively and in person with such assistance, advice and recommendation of the corresponding department head, as he himself may choose to demand. Accordingly, the bare statement made by the President of his non-objection to the action taken by the Secretary of the Interior in the present case is not a sufficient exercise of his power to suspend, for it may mean neither approval nor disapproval. The President probably believed, and indeed rightly as I shall hereafter show, that the power to suspend the petitioner also resided in the Secretary of the Interior, and called upon to exercise his power of supervision, he confined himself to making a mere statement of non-objection to the latter's exercise of his power. This, in my opinion, is the most rational explanation of the passive attitude thus observed by the President. I am almost sure that had he intended to exercise his own power to suspend, he would have done so, as usually, in a manner that would not admit of any possibility of doubt.

Moreover, besides the written statement of non-objection made by the President, it is claimed by the Solicitor-General that the President expressly and orally approved the order of suspension issued by the Secretary of the Interior. Such supposed oral approval alleged in the respondent's answer is, however, deemed controverted by the petitioner, according to section 104 of Act No. 190, and, not being supported by proof, it cannot be considered as a true fact in the disposition of this case.

If I agree with the result, it is not therefore on the broad proposition relied upon by the majority, but from what is necessarily implied from express provisions of law. Section 37 of Act No. 4007 provides:

"The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division or service."

There can be no question that the word "division" in the above provision has no other reference than to provinces and municipalities (Chapter 2 and section 86, Adm. Code). It is then evident that this provision confers upon the Secretary of the Interior the power residing in the provincial governor (section 2188, Adm. Code) to decree the suspension of the petitioner pending an administrative investigation of the charges against him. That this is the true meaning of the law, the majority does not question.

Fear, however, has been expressed in the majority opinion that this view may result in the complete abrogation of the powers of provincial and municipal officials even in corporate affairs of local governments. Instances are cited in which the Secretary of the Interior may exercise for himself the powers vested by law in provincial governors and municipal mayors as to matters of both governmental and corporate functions of provinces and municipalities, such as, the power to veto, the power to appoint, and the power to enter into contracts. Whether or not the Secretary of the Interior can thus exercise the powers vested by law in provincial and municipal executives in the instances cited, to the complete abrogation of provincial and municipal autonomy, is a question which I need not discuss now. Other provisions of law and a number of collateral questions may have to be inquired into if any safe conclusion is to be formed. But even if, as feared, the law has the effect of nullifying the powers conferred upon provincial and municipal executives, can there be any doubt that the law can do so? The same authority that creates those powers may withdraw or qualify them at will or provide effective measures of supervision over their exercise. The extent or even the existence of local autonomy is a matter which lies within the exclusive prerogative of the Legislature to define. If the law is clear, our duty to apply it is just as clear, irrespective of how destructive it may be of the autonomy of local governments. To refuse to apply a law, which is otherwise applicable and is valid and constitutional, simply because it does violence to our theory of government, would, in

effect, be imposing ourselves upon the legislative department of the government and an intrusion into its own sphere of constitutional authority.

Moreover, the law is not of such "destructive authority" as the majority has pictured it to be. The philosophy behind this provision is apparent. It is intended to supply possible omissions or inactions on the part of the subordinate officers concerned by reason of the entanglement arising from partisan activities. The power which the law confers upon the department head is undoubtedly susceptible of abuses. But what power is not susceptible of abuse? In the enactment of the law, the Legislature undoubtedly relied much on the sense of patriotism and sound judgment of the department head. It is perhaps the intention of the law that the department head should exercise his power in a manner compatible with the autonomy given the local governments, and that he should act directly only when the exigencies of the situation require him to act in the interest of the Nation. Thus, the department head is given ample discretion. The possibility of a mischievous or disastrous abuse of power on his part is not entirely without any remedy at all. The presidential power of control over executive departments and the existence of judicial remedies may afford effective check or redress. In the instant case, there is no showing that the Secretary of the Interior has abused, or ever intended to abuse, the power of suspension. If a capricious and whimsical use of such power presents itself to us for determination in some future time, then and there must we declare where one power begins and the other ends.

As the law, therefore, is not unconstitutional, we would be ignoring its clear provision if not applied in this case.

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