

LOPE SEVERINO, PETITIONER, VS. THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS AND THE PROVINCIAL BOARD OF OCCIDENTAL NEGROS, RESPONDENTS.

G.R. No. 6250. August 03, 1910

Ponente: TRENT, J.

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TRENT, J.:

This is an original application made in this court, praying for a writ of mandamus to the Governor-General of the Philippine Islands, one of the respondents, to compel him to call a special election for the purpose of electing a municipal president in the town of Silay, Province of Occidental Negros, and praying also that a preliminary injunction be issued restraining the respondents, the Governor-General of the Philippine Islands and the provincial board of the Province of Occidental Negros, from appointing a municipal president for the said municipality during the pendency of this proceeding.

From the petition the following facts appear:

- That the petitioner is a resident, a duly qualified elector, and local chief of the Nacionalista party in the town of Silay, Province of Occidental Negros;
- That on the 2d day of November, 1909, there was held in the said municipality a general election for the purpose of electing municipal officials, Emilio Gaston being the Nacionalista candidate for the office of municipal president and Domingo Hernaez being the Progresista candidate for the same office. According to the returns, Domingo Hernaez was elected municipal president. Emilio Gaston, under the provisions of section 27 of Act No. 1582 (Election Law), filed a protest in the Court of First Instance of the said province. The said Court of First Instance thereupon proceeded with the trial of the cause, and at the termination of the same, rendered, on the 14th day of December, 1909, its judgment, declaring that no one was legally elected municipal president of the said town of Silay, and this decision was duly certified to the Governor-General, as provided in said section 27; and,
- That the Governor-General, instead of calling a special election as required by law to elect a municipal president for said town, has directed the provincial board of said province to fill this vacancy by appointment, submitting to him, for his approval, the name of the person to be appointed.

The case is now before us on a demurrer to the petition, and on the petition for a preliminary injunction during the pendency of this proceeding. It is urged by the Attorney-General, who appears as counsel for the respondents, that:

- The complainant has no such beneficial interest in the act which he seeks to have performed or restrained as to make him a proper party to these proceedings and entitle him to maintain the same;
- That this court has no jurisdiction to control by mandamus or injunction the official acts of the Governor-General, the head of the executive department of the Philippine Government; and,

- That the official act which the complainant seeks to have performed, and also the official act which he seeks to have restrained, are acts which are left to the discretion of the Governor-General, and as such are not subject to the control of the court.

The complainant, Lope Severino, is a private individual of the Philippine Islands. The only allegation in the petition which tends to show (aside from the fact that he is a duly qualified elector and citizen of the Philippine Islands) that he is a proper party to these proceedings is that he is the local chief of the Nacionalista party in the town of Silay. He has no authority by statute, or otherwise, to represent the public. The only provision in the Election Law which refers in any manner to political parties is found in section 15. This section deals exclusively with the appointment of election inspectors and provides that, should there be in any municipality one or more political parties, or branches thereof, which shall have polled 30 per cent, or over, of the votes cast at the preceding general election, then two inspectors shall belong to the party which polled the largest number of votes, and the other shall belong to the party which polled the next largest number. The complainant does not allege that the local party which he represents polled 30 per cent, or over, of the votes cast for municipal president, or any other office, at the preceding general election.

Should the Governor-General appoint a president of the municipality of Silay and fail to call a special election, if any injury should result it would be of a public nature and the complainant would suffer no substantial injury different from that suffered by the public at large. So his status as complainant in these proceedings is that of a private citizen of the town of Silay. Therefore, we shall inquire into the question as to whether or not, admitting that the writs might issue, Lope Severino is a proper complainant. This question has been before the courts of the United States frequently and the decisions upon the same are not uniform. Some of the courts hold that an individual citizen is not entitled to institute proceedings in mandamus against public officers to compel the performance of a public duty, unless such citizen shows some specific or peculiar interest in himself different from that shared by the public at large, and in such cases the relief should be sought in the name of the public and by its legal representative.

It the case of *Mitchell vs. Boardman* (79 Me., 469), the court held that -

"A writ of mandamus will be granted to a private individual only in those cases where he has some private or particular interest to be subserved, or some particular right to be protected, independent of that which he holds in common with the public at large. It is for the public officers exclusively to apply for the writ when public rights are to be subserved."

This same rule has been announced and followed in the case of *Sanger vs. Kennebec County Com'rs.* (25 Me., 291) ; *Bobbet vs. State* (10 Kan., 9); *Commonwealth vs. Park* (9 Phila., 481); *Linden vs. Alameda County Sup'rs.* (45 Cal., 6); *People vs. State Prison* (4 Mich., 187); and *O'Brien vs. Members of the Board of Aldermen of Pawtucket* (18 R. I., 113). Other decisions might be cited in support of this doctrine.

On the other hand, High, in his work on *Extraordinary Legal Remedies*, third edition, section 431, says:

"As regards the degree of interest on the part of the relator requisite to make him a proper party on whose information the proceedings may be instituted, a distinction is taken between cases where the extraordinary aid of a mandamus is invoked merely for the purpose of enforcing or protecting a private right, unconnected with the public interest, and cases where the purpose of the application is the enforcement of a purely public right, where the people at large are the real party in interest. And while the authorities are somewhat conflicting, yet the decided weight of authority supports the proposition that, when the relief is sought merely for the protection of private rights, the relator must show some personal or special interest in the subject-matter, since he is regarded as the real party in interest and his right must clearly appear. Upon the other hand, when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty,

the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws." (Citing numerous cases.)

In the case of *Hamilton, Auditor of Marion County, vs. State*, on relation of *Bates* (3 Ind., 451), the court, after stating the facts, said (p. 458):

"Were this a case merely for private relief, the relator would have to show some special interest in the subject-matter. But here the case is different. The defendant, who was county auditor, refused to issue the legal duplicate for the collection of the taxes and a mandamus was applied for to compel him to discharge this duty of his office. It is a case for the enforcement, not of a private, but of a public right; and it is not necessary, in such cases, that the relator should have a special interest in the matter, or that he should be a public officer. That the defendant should discharge, correctly, the duties of his office, was a matter in which *Bates*, as a citizen of the county, had a general interest; and that interest was, of itself, sufficient to enable him to obtain, the mandamus in question."

In the case of the *State of Ohio, ex rel. Trauger, vs. Nash, Governor* (6Q Ohio St., 612), the complainant alleged that he was an elector, citizen, taxpayer, and the owner in fee simple of real estate in the city of Columbus, State of Ohio; that the defendant, *Nash*, was the duly elected, qualified, and acting governor of the State; that on May 2, 1902, the duly elected and qualified lieutenant-governor resigned, thereby creating a vacancy in the office of lieutenant-governor; and that it was the duty of the defendant, as governor, under the provisions of sections 11 and 81 of the revised statutes of the State, to appoint an elector of the State of Ohio to fill the vacancy in the office of lieutenant-governor. The court in passing upon the question as to whether or not the complainant, *Trauger*, was the proper party to institute these proceedings, said (p. 615) : "It may be conceded that a majority of the courts which have pronounced opinions on the subject have held that a private relator applying for a mandamus must show a special interest in himself; but even in some of those jurisdictions it has been said that 'the rule which rejects the intervention of the private complainants against public grievances is one of discretion and not of law,' " citing *Ayres vs. Board of State Auditors* (42 Mich., 422) ; *Railroad Co. vs. Hall et al.* (91 U. S., 343) ; *Railroad Co. vs. Suffern et al.* (129 111., 274); *State, ex rel Currie, et al., vs. Weld County Auditor* (39 Minn., 426) ; *State vs. Brown* (38 Ohio St., 344) and *State, ex rel., vs. Tanzey et al.* (49 Ohio St., 656).

In the case of *Ayres vs. Board of State Auditors*, *supra*, the court said (pp. 429, 430):

"In the present case the officer whose duty it usually is to enforce the rights of the State, in this court, has, in the performance of his official functions as adviser of the State officers, placed himself in an adverse position, and appears for the respondents on this application. Inasmuch, then, as the attorney-general refuses to appear and seek the enforcement of the statutory provision, does his refusal preclude its enforcement? And if not, is the relator authorized to bring the matter before this court?

"There may perhaps be others who have interests that would justify their appearance, but there is no one else whose duty it is to appear where the attorney-general declines to do so.

* * * * *

"There are serious objections against allowing mere interlopers to meddle with the affairs of the State, and it is not usually allowed unless under circumstances where the public injury by its refusal will be serious. * * * But we find no reason to consider the matter as one lying outside of judicial discretion, which is always involved in mandamus cases concerning the relief as well as other questions."

In the case of *Railroad Co. vs. Hall et al.*, *supra*, the Supreme Court of the United States said:

"There is, we think, a decided preponderance of American authority in favor of the doctrine that private

persons may move for a mandamus to enforce a public duty, not due to the Government as such, without the intervention of the Government law officer."

Paragraph 2 of section 164 of the Code of Civil Procedure in force in the Philippine Islands provides that a preliminary injunction may be granted when it is established, to the satisfaction of the judge, "that the commission or continuance of some act complained of during the litigation would probably work injustice to the plaintiff."

Section 222 of the same code provides that when the complaint in an action in a Court of First Instance alleges that any inferior tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled, * * * and the court on the trial finds the allegations of the complaint to be true, it may, if there is no other plain, speedy, and adequate remedy in the ordinary courts of law, render a judgment granting a peremptory order against the defendant to do the act required to be done to protect the rights of the plaintiff.

Section 515 provides that the Supreme Court shall have concurrent jurisdiction with the Courts of First Instance in all cases where an inferior tribunal, corporation, board, or person unlawfully excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully excluded by such inferior tribunal, corporation, board, or person.

Under these provisions the relator, in order to obtain an injunction, must show that he is entitled to the relief demanded and that the continuance of the acts complained of or threatened to be done would probably work an injustice to the plaintiff. Also in order to obtain a mandamus he must allege and show that the respondents are excluding him from a right or office to which he is entitled, and that the respondents are unlawfully neglecting the performance of an act or acts which the law especially enjoins as a duty resulting from their office, trust, or station.

The relator in the case at bar alleges that he has a right conferred upon him by statute to participate in the selection of the president of the town of Silay; that the respondents are attempting to deprive him of this right by appointing a president and refusing to call a special election. It is true, as we have stated, that the right which he seeks to enforce is not greater or different from that of any other qualified elector in the municipality of Silay. It is also true that the injury which he would suffer in case he fails to obtain the relief sought would not be greater or different from that of the other electors; but he is seeking to enforce, a public right as distinguished from a private right. The real party in interest is the public, or the qualified electors of the town of Silay. Each elector has the same right and would suffer the same injury. Each elector stands on the same basis with reference to maintaining a petition to determine whether or not the relief sought by the relator should be granted.

It is urged by counsel for the respondents that should this court hold that the relator has a sufficient right to maintain this proceeding and should grant or deny, the writs prayed for, such holding would not preclude any other qualified elector of Silay from instituting another proceeding of this same character and seeking the same relief, resulting in a multiplicity of suits and a continual annoyance to the respondents. While this may possibly be true (a question which we do not now decide), nevertheless the question as to whether or not innumerable petitions of this character would follow is a practical one and not one of law. We are not called upon to decide practical questions of this nature, but we might add that as far as the practical effect of such holding is concerned it would preclude the filing of other petitions by other electors inasmuch as should this court hold that these writs will not lie to the Governor-General, and the rights of the other parties being the same as that of the petitioner herein, it would be seen that it would be useless to institute other proceedings of the same character. On the other hand, should this court hold that the writs will lie, then it would not be necessary for any other elector or electors to move in the matter. Should they do so this court in the use of its discretionary power could deny such petitions

without a hearing.

We have examined the cases wherein the courts of the United States have held that private individuals are not proper parties in cases where a public right is to be enforced, unless such private persons have some particular interest to be subserved or some particular right to be protected independent of that which they hold in common with the public at large. In these cases the courts hold that it is for the public officers exclusively to apply for the relief when such rights are to be subserved. In such cases it is the duty, by express provisions of law, of public officers to enforce such rights.

In this jurisdiction it is the duty of the Attorney-General "to perform the duties imposed upon him by law," and "he shall prosecute or defend therein all causes, civil and criminal, to which the Government of the Philippine Islands, or any officer thereof, in his official capacity, is a party." (Sees. 1365 and 1366 of Compilation.) The duties of the Attorney-General are expressly provided and he is not called upon to perform any other duties. He would have no authority to represent any other entities or persons in a case in which duties are not especially imposed upon him by statute. It is his duty to represent the public officer when such public officer is a party to a suit in his official capacity. The same is true of the provincial fiscals.

The Attorney-General, in compliance with the duty imposed upon him by law, appeared for the respondents in this case. It is not the duty of any law officer of the Government to appear for the relator, neither could such law officer, in his official capacity, represent the relator if he desired to do so. No express provision is found making it the duty of any official of the Government to bring these proceedings. So, if the relator is precluded from maintaining these proceedings for the purpose of having his rights passed upon by this court, these questions could not be raised.

Counsel for respondents urge that this court impliedly laid down the rule in the case of *Abendan vs. Llorente* (10 Phil. Rep., 216) that, where the injury complained of is really a public injury and the right violated is a public right, an individual can not maintain a suit to enforce such right unless he alleges that he would suffer a special injury and has a substantial right different from that suffered or held by the public at large. The question presented in this case is different from that presented in the case at bar. *Abendan*, the plaintiff in this case, brought an original action of certiorari in the Supreme Court of the Philippine Islands for the purpose of having reviewed a judgment entered in the Court of First Instance of the Province of Cebu. The defendants, one of whom was the judge of that court, having been directed to show cause why the record in the case in which that judgment was entered should not be remitted to the Supreme Court and examined, appeared and objected to such an order on the ground that the plaintiff had no right to have such judgment reviewed. That case arose out of a certain election protest proceeding had in the Court of First Instance. The plaintiff, *Abendan*, was not a party to the said proceedings. Those proceedings were carried on exclusively between *Llorente* on the one hand and *Vicente Sotto* and *Timoteo Castro* on the other, *Llorente* protesting the election of municipal president. If *Abendan* cast his vote in the said election he exercised all the rights he had in the premises. The question was between the candidates as to who was entitled to hold the office of municipal president. This court in passing upon the question raised in this case said (p. 217) : "In our opinion, this fact (referring to the fact that *Abendan* was a qualified elector) does not give him any standing in this court to ask for the review of that judgment. There is nothing in the complaint to show whether or not he voted at the election in question, or, if he did so vote, whether he voted for *Llorente*, *Sotto*, or *Timoteo de Castro*. We find nothing in the Election Law (Act No. 1582) which allows a voter who was not a candidate to take any proceedings in court to contest the legality of an election."

The court in this case held that a voter who was not a candidate could not take any proceeding into court to contest the legality of an election. No other question was before the court and it did not decide any other question. The question before the court in the case at bar is not one affecting the legality of an election. We now have

nothing to do with any election, so far as its legality is concerned.

In the case at bar the question between the candidates was settled in the Court of First Instance and their rights as such candidates disappeared on the final determination of the case in said court. The court held that no one was legally elected municipal president and thereafter the candidates who protested that election had no greater or different right from that of any other elector, as far as the questions under consideration are concerned. The relator seeks to have the whole question returned to the municipality for determination. Any qualified elector could have become a candidate immediately upon the termination of the protest. The question is no longer just between the two candidates, but all the electors are now affected alike.

We are therefore of the opinion that the weight of authority supports the proposition that the relator is a proper party to proceedings of this character when a public right is sought to be enforced. If the general rule in America were otherwise, we think that it would not be applicable to the case at bar for the reason "that it is always dangerous to apply a general rule to a particular case without keeping in mind the reason for the rule, because, if under the particular circumstances the reason for the rule does not exist, the rule itself is not applicable and reliance upon the rule may well lead to error."

No reason exists in the case at bar for applying the general rule insisted upon by counsel for the respondent. The circumstances which surround this case are different from those in the United States, inasmuch as if the relator is not a proper party to these proceedings no other person could be, as we have seen that it is not the duty of the law officer of the Government to appear and represent the people in cases of this character.

We are, therefore, of the opinion that the relator is a proper party to these proceedings and has a right as such to have the question determined as to whether or not the writs should issue.

We will now proceed to determine whether or not the court has jurisdiction to control by mandamus or injunction the official acts of the Governor-General. If the Governor-General can not be compelled by a mandamus to call this special election it follows that he can not be restrained by injunction from appointing a person to fill the position of municipal president, for the nature of the act to be performed by him is precisely the same in one case as in the other, and the same considerations operate to sustain or defeat the jurisdiction of the court in both instances.

It is admitted and universally recognized that mandamus and injunction will never lie to enforce or restrain a duty which is discretionary. This proposition is elemental and it is unnecessary to cite authorities in support of the same. We believe that it is well settled in the United States that the courts will never assume jurisdiction over the official acts of the President. This question was first raised and so impliedly decided in 1803 in the case of *Marbury vs. Madison* (1 Cranch, 152), and was directly decided in the case of the *State of Mississippi vs. Johnson* (4 Wall., 475). In this latter case a motion was filed on behalf of the State of Mississippi for leave to file a bill in the name of the State praying the Supreme Court to perpetually enjoin and restrain Andrew Johnson, President of the United States, from executing, or in any manner carrying out, the Reconstruction Act. The court in passing upon this question as to whether or not in any case the President of the United States could be compelled to perform a purely ministerial act under a positive law, said:

"The Congress is the legislative department of the Government; the President is the executive department. Neither can be restrained in its action by the judicial department; though the acts of both, when performed, are, in proper cases, subject to its cognizance.

"The impropriety of such interference will be clearly seen upon consideration of its possible consequences.

"Suppose the bill filed and the injunction prayed for allowed. If the President refuse obedience, it is needless to

observe that the court is without power to enforce its process. If, on the other hand, the President complies with the order of the court and refuses to execute the acts of Congress, is it not clear that a collision may occur between the executive and legislative departments of the Government? May not the House of Representatives impeach the President for such refusal? And in that case could this court interfere, in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public world of an attempt by this court to arrest proceedings in that court?

"These questions answer themselves. * * * We are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties; and that no such bill ought to be received by us. * * * The motion for leave to file the bill is therefore, denied."

The differentiation invoked by the courts between the President and governors of States on one hand and cabinet officials and inferior state officials on the other hand is plainly indicated in the case of *Kendall vs. United States* (12 Pet., 522), wherein the court used the following language:

"The executive power is vested in a President; and so far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in the mode prescribed by the Constitution, through the impeaching power. But it by no means follows that every officer in every branch of that department is under the exclusive direction of the President. Such a principle, we apprehend, is not, and certainly can not be claimed by the President. There are certain political duties imposed upon many officers in the executive department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, that Congress can not impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President. And this is emphatically the case, where the duty enjoined is of a mere ministerial character."

The question whether governors of States in the Union are amenable to the orders of the courts in the performance of their ministerial duties has been answered in two irreconcilable lines of decisions. In one line of decisions it is held that the writ of mandamus will not lie to the governor of a State to compel the performance of any official duty, he being entirely removed from the control of the courts without regard to the question as to the nature of such duties, whether strictly executive or political, inherent in the office of governor, or purely ministerial. On the other hand, the courts, while granting the complete independence of the governors from judicial control in the performance of purely executive and political functions, have held, as to ministerial duties incumbent by law upon them, and which the legislature might with equal propriety require any other official to perform, wherein the special private right of a citizen is involved, that the writ of mandamus will lie to compel the performance of such duty.

In the case at bar counsel for the relator insists that the acts sought to be performed by the Governor-General are purely ministerial, conferred upon him by express statute and which could have been with equal propriety conferred upon other officials of the Philippine Government. Conceding, without deciding, the correctness of this proposition, we will proceed to the decision of the main question, for the proper determination of which it is necessary to notice some of the steps by which the constituted Government in the Philippine Islands was established.

The United States acquired the Philippine Islands by cession under the treaty of peace executed at Paris on December 10, 1898, between the United States and Spain, the final ratifications being exchanged on April 11, 1899. The Philippine Islands after American occupation were under military rule, prior to the creation by the President of the Philippine Commission. This military government was established by the President of the United States under his war power, exercising executive, legislative, and judicial authority, all of which he might have

exercised personally or through such military or civil agents as he chose to select. The President continued to exercise his war power, as Commander in Chief of the military forces, up until March 2, 1901, the date of the approval by the President of the Spooner Amendment. Notwithstanding that the Philippine Commission had been created prior to this time with certain legislative and executive powers, the government established continued to be a military government. The Spooner Amendment did not change the form of the government which had been established by the President under his war power, but it did make a fundamental change in respect to the legal authority exercised by the President in this country. Thereafter, in the administration of civil affairs in this country, he acted in his civil capacity as President of the United States and not as Commander in Chief of the Army. From this time, legally speaking, dates the commencement of civil government. Exercising this civil authority as President of the United States, conferred upon him by the Spooner Amendment, the President proceeded to create the office of Civil Governor, which he did in June, 1901, to take effect on July 4 of the same year, on which date the Civil Governor was inaugurated. By virtue of the same power the President proceeded with the further organization of civil government by creating (September 1, 1901) four executive departments and the office of Vice-Governor (October 29, 1901), and by virtue of the authority conferred upon him by the said Spooner Amendment he continued the administration of civil affairs until the Congress of the United States assumed charge July 1, 1902. In the meantime the office of Military Governor was abolished and the Civil Governor became the Executive. The instructions of the President of the United States to the Philippine Commission, dated April 7, 1900, and the Act of Congress approved July 1, 1902, now constitute the Organic Acts, by virtue of which the Civil Government was established.

The President of the United States, in the creation of civil government and the administration of civil affairs, exercised the combined powers of the Federal and State governments, and now Congress, in legislating for this country, exercises the combined legislative powers which are exercised by the Federal and State governments. The legislative power which was delegated by the President to the Philippine Commission and which was later ratified by the Congress of the United States was more comprehensive than the legislative powers now possessed by State governments.

In the Organic Act (Instructions of the President to the Philippine Commission) there were extended to the Philippine Islands and made the very foundation of our governmental system the great principles which are found in the Constitution of the United States and the constitutions of the different States. These great principles of government, as President McKinley said in his instructions, "have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, * * *; that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law, and that these principles and these rules of government must be established and maintained in their Islands for the sake of their liberty and happiness, * * *. Upon every division and branch of the Government of the Philippines, therefore, must be imposed these inviolable rules:

"That no person shall be deprived of life, liberty or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, * * *."

These fundamental principles were approved and ratified by the Congress of the United States and are now, and have been since the organization of the Philippine Commission, the law of the land, and upon them has been reared our present Civil Government in these Islands. In order to make these principles effective and considering that the American Union has always believed them essential to a republican form of government, the Philippine Commission proceeded to organize one of the great coordinate branches of the government, the judicial department, providing in section 2 of Act No. 136 that "the judicial power of the Government of the Philippine Islands shall be vested in a Supreme Court, Courts of First Instance, and courts of justices of the peace, together

with such special jurisdictions of municipal courts, and other special tribunals as now are or hereafter may be authorized by law." This provision was likewise affirmed and ratified by Congress.

It having become necessary in the judgment of the President of the United States, he created, as we have seen, the office of Civil Governor (Governor-General) and vested in him the executive authority in all civil affairs in the Government of the Philippine Islands, which had theretofore been exercised by the Military Governor. This order of the President was also ratified and affirmed by Congress. All the legislative power in civil affairs was vested in the Philippine Commission, which was exercised by it until the convening of the Assembly, and that legislative power is now exercised by the Philippine Legislature in all that part of the Philippine Islands not inhabited by Moros or other non-Christian tribes, the Commission still retaining its legislative power over the Moro Province and the territory inhabited by non-Christian tribes.

This government being modeled after the Federal and State governments in the United States now possesses a complete governmental organization, with executive, legislative, and judicial departments, which are exercising functions as independent of each other as the Federal or State governments.

Counsel for the relator urges that the executive and legislative departments are not independent of each other, basing this contention upon the fact that the Governor-General is not only the Executive of the Philippine Islands but a member and presiding officer of the Upper House of the Philippine Legislature. It is true that the Governor-General is a member of the Upper House and presides over its deliberations, but he does not possess the veto power which is possessed by the President of the United States and every State governor. This veto power gives the Chief Executive of the United States and the chief executives of the different States greater control over the legislation than is possessed by the Governor-General of the Philippine Islands. The Governor-General has only one vote in the Philippine Legislature, while the chief executives of the Federal and State governments, exercising their veto power, can prevent enactments from becoming laws when passed by a majority of the legislative body, unless the consent of two-thirds of the members of the legislative body is obtained and the law passed over the executive's veto.

While the duties imposed upon the Governor-General of the Philippine Islands are not as great as those imposed upon the President of the United States, we think he holds a more responsible position than those held by the State governors. As a general rule the powers and duties of State governors are specifically set forth in the State constitutions and enactments. The powers and duties of the Governor-General of the Philippine Islands are not specincally stated in the Organic Acts. The Governor-General, who we think can properly be called the Executive of the Philippine Islands, is not elected by the people, but appointed by the President of the United States, with the advice and consent of the United States Senate, and he is directly responsible to the President for his official acts. No provisions are made or provided in this country for the impeachment of the Governor-General as is provided in Federal and State governments. Nevertheless, he is responsible directly to the President and indirectly to the people of the United States and of the Philippine Islands for his official acts and conduct. His recall is not so difficult to obtain as the impeachment of the President of the United States or a State governor. The Governor-General is in a way responsible for, and has direct supervision over, the provincial and municipal executive officers, although a part of them are elected by the people. The election of provincial officials must be approved and confirmed by him, and he, with the advice, and consent of the Philippine Commission, may remove for just cause any of these elective provincial officials. He has the power to, and does, appoint, with the advice and consent of the Philippine Commission, the chiefs of the Insular Bureaus and their assistants, with the exception of those of Auditor and Treasurer, and may suspend or remove them for just cause. He also, under the same conditions, has the power, and does appoint, and can remove a great number of other Insular officials. In exercising his executive authority in the enforcement of the laws he does so through an unbroken chain of

subordinate officials. Governors of States in the Union are not the "executives," but are only the "chief executives." All State officials associated with the governor, it may be said as a general rule, are, both in law and in fact, his colleagues, not his agents nor even his subordinates (except in formal rank and precedence). They, like himself (with the exception of a few States wherein the governors have the power to appoint some State officials), are elected by the people. He is in no way concerned in their choice. They are not given him as advisers; on the contrary they are coordinated with him. As a general rule he has no power to suspend or remove them. It is true that in a few of the States the governors have power to appoint certain high officials, but they can not be removed for administrative reasons. These are exceptions to the general rule. The duties of these officials are prescribed by constitutional provisions or by statute, and not by the governor. The actual execution of a great many of the laws does not lie with the governors, but with the local officers who are chosen by the people in the towns and counties and "bound to the central authorities of the State by no real bonds of responsibility." In most of the States there is a significant distinction between the State and local officials, such as county and city officials over whom the governors have very little, if any, control; while in this country the Insular and provincial executive officials are bound to the Governor-General by strong bonds of responsibility. So we conclude that the powers, duties, and responsibilities conferred upon the Governor-General are far more comprehensive than those conferred upon State governors.

Inasmuch as the three coordinated departments of the Government, the executive, legislative, and judicial, have been established and are operating, as we have said, as independently of each other as the same three coordinated branches created under the constitution of the Federal and State governments are operating in the American Union, and in view of the fact that there have been conferred upon the Chief Executive of these Islands more extensive powers, duties, and responsibilities than have been conferred upon the governors of the various States of the Union, we think the reason for the holdings of the courts of the United States, which have passed upon this question, are worthy of consideration. We might here add that we have no doubt that the present incumbent of the office of Governor-General, a man who is ready and willing at all times to render obedience to the law, would follow the mandate of this court, but such willingness to be governed by the order of this court would not of itself give us jurisdiction. Nor should he manifest (which he has not done) his intention to not obey the mandate of this court, this would not be sufficient reason for us to abstain from requiring him to comply with such mandate in case we have jurisdiction.

The question as to whether or not the courts have jurisdiction to control the official acts of the governor has been before a great many courts of the States in the Union. We shall not attempt to examine all of these cases. Among those which support the proposition that the courts of the States have no jurisdiction are the following: *Hawkins vs. The Governor* - mandamus - (1 Ark., 570) ; *The State, ex ret, vs. Drew, Governor* - mandamus - (17 Fla., 67); *Low vs. Towns, Governor* - mandamus - (8 Ga., 360) ; *The People, ex rel., vs. Bissell, Governor* - mandamus - (19 111., 229) ; *The People, ex rel., vs. Yates, Governor* - mandamus - (40 111., 126) ; *The People, ex rel, vs. Cullom, Governor* - mandamus - (100 111., 472); *The State vs. Warmoth, Governor* - mandamus - (22 La. Ann., 1); *Dennet, petitioner, vs. The Governor* - mandamus - (32 Me., 508) , *The People vs. The Governor* - mandamus - (29 Mich., 320); *Rice vs. Austin, Governor* - mandamus - (19 Minn., 74); *Western Rid. Co. vs. De Graff* - mandamus - (27 Minn., 1) ; *Vicksburg Rid. Co. vs. Lowry, Governor* - mandamus - (61 Miss., 102) ; *The State vs. The Governor* - mandamus - (39 Mo., 388); *The State vs. Price, Governor* - mandamus - (1 Dutcher (N. J.), 331); *Hartranft's Appeal* - contempt - (85 Pa. St., 433); *Mauran vs. Smith, Governor* - mandamus - (8 R. I., 192); *Turnpike Co. vs. Brown, Governor* - mandamus - (8 Baxt. (Tenn.), 490).

And the cases which support the proposition that the courts can compel the governors to perform purely ministerial duties are the following;

Tenn., etc., *Rid. Co. vs. More*, Governor - mandamus - (36 Ala., 371); *Middleton vs. Low*, Governor - mandamus - (30 Cal., 596) ; *Harpending vs. Haight*, Governor - mandamus - (39 Cal., 189); *Wright, Governor, vs. Nelson* - mandamus - (6 Ind., 496); *Baker, Governor, vs. Kirk* - mandamus - (33 Ind., 517); *Gray, Governor, vs. The State* - mandamus - (72 Ind., 567); *Magruder vs. Swann*, Governor - mandamus - (25 Md., 173); *Groome, Governor, vs. Gwinn* - mandamus - (43 Md., 572 ; *Chamberlain vs. Sibley*, Governor - mandamus - (4 Minn., 309); *Chumasero vs. Potts*, Governor - mandamus - (2 Mont., 242); *Wall vs. Blasdel*, Governor - mandamus - (4 Nev., 241); *Cotton vs. Ellis*, Governor - mandamus - —(7 Jones (N. C.) Law, 545); *The State vs. Chase*, Governor - mandamus - (5 Ohio St., 528).

One of the foremost cases supporting the last proposition is that of *State, ex ret Whiteman et al. vs. Governor* (5 Ohio St., 528), decided in 1856. In this case the court said (p. 534):

"That each of these coordinate departments (executive, legislative, and judicial) has duties to perform in which it is not subject to the controlling or directing authority of either of the others, must be conceded. But this independence arises not from the grade of the officer performing the duties, but the nature of the authority exercised. Under our system of government, no officer is placed above the restraining authority of the law, which is truly said to be universal in its behests - 'all paying it homage, the least as feeling its care, and the greatest as not exempt from its power.' And it is only where the law has authorized it, that the restraining power of one of these coordinate departments can be brought to operate as a check upon one of the others.

* * * * *

"While the authority of the governor is supreme in the exercise of his political and executive functions which depend on the exercise of his own judgment or discretion, the authority of the judiciary of the State is supreme in the determination of all legal questions involved in any matter judicially brought before it. Although the State can not be sued, there is nothing in the nature of the office of governor which prevents the prosecution of a suit against the person engaged in discharge of its duties. This is fully sustained by the analogy of the doctrine of the Supreme Court of the United States, in the case of *Marbury vs. Madison* (1 Cranch, 170)."

The court in this case incorporated into its decision the words of Chief Justice Marshall in the case of *Marbury vs. Madison* as follows:

"It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety or impropriety of issuing a mandamus is to be determined."

These words of the great Chief Justice have frequently been cited by the courts and are considered as authoritative in support of the last proposition.

In the case of *Marbury vs. Madison*, supra, a rule was granted requiring the Secretary of State, Mr. Madison, to show cause why a mandamus should not be issued, directing him to deliver to William Marbury his commission as justice of the peace for the County of Washington, in the District of Columbia. No cause having been shown, the case came on by motion for a mandamus. The court discussed and decided three questions:

- Had the applicant a right to the commission he demanded?
- If he had such right and that right had been violated, would the laws of his country afford him a remedy?
- If they would afford him a remedy was it a mandamus issuing from that court?

That court held that Marbury had been duly and regularly appointed justice of the peace and that the appointment conferred upon him a legal right to the office; that having this legal title to the office he had a consequent right to the commission, further holding that a refusal to deliver the commission was a plain violation of the appellant's right for which the laws of his country afforded him a remedy. The case went off on a jurisdictional question and

the writ was denied. The court said:

"The Act to establish the judicial courts of the United States authorizes the Supreme Court 'to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed or persons holding office, under the authority of the United States.' The Secretary of State, being a person holding an office under the authority of the United States, is precisely within the letter of this description; and if this court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional, and therefore, absolutely incapable of conferring the authority, and assigning the duties which its words purport to confer and assign."

After due consideration of the question as to the constitutionality of this Act, the court held that it was unconstitutional and that it had no original jurisdiction to issue the writ, inasmuch as this was a proceeding filed in the Supreme Court and did not come up by appeal. If the proceedings had been instituted in an inferior court and came to the Supreme Court on appeal, then the court might have had jurisdiction.

Chief Justice Marshall's same words were used in the case of *Martin vs. Ingham* (38 Kan., 641), as a basis for holding that the writ of mandamus would lie to the governor to compel the performance of a purely ministerial duty. The court in this case, after quoting these words of Chief Justice Marshall, said (p. 654):

"And such is the rule in all cases unless the courts are required to make an exception in favor of the governor."

This statement of the Chief Justice, relied upon in the *Ohio, Kansas*, and other cases, deserves due consideration; but it has been held by a number of courts to be dictum, inasmuch as the only question which it was necessary to determine was one of original jurisdiction. Chief Justice Marshall, in the same opinion, made use of this language:

"Still, to render the mandamus a proper remedy, the officer to whom it is to be directed, must be one to whom, on legal principles, such writ may be directed."

On the other hand, *Merrill on Mandamus*, p. 102 et seq., summarizing the decisions relative to the question of mandamus against governors of States, says that:

"A large number of State courts hold that the writ of mandamus will never run against the governor of a State, assigning as reasons for such ruling political necessity and public policy, regardless of whether duty be imposed upon him by the State constitution or by statute."

And under the heading "Deductions From the Decisions," concludes:

"Fortunately such cases seldom arise, yet they show that the courts can not cope with all the difficulties, and if they can not act in some cases it can not follow that they are necessarily the parties to pass on other cases, where political questions of a similar nature are involved, namely, the independence of the various coordinate branches of the government. When it is remembered that the use of this writ is the outgrowth of necessity in order to meet the demands of justice, and its issuance is largely dependent upon the discretion of the court, its use to determine the legality of a body claiming to be a legislature seems questionable, while its issue to compel an action by the governor would seem to be entirely inappropriate."

One of the leading cases which support the proposition that the courts have no jurisdiction to control the official acts of a State governor is that of *Sutherland vs. Governor* (29 Mich., 320). The opinion in this case was delivered by Justice Cooley, one of the leading American jurists. This is a very exhaustive opinion and one cited and followed by a number of the State courts. We think it pertinent to note the major points in this case and quote extensively from this opinion.

In 1874 an application was made to the supreme court of Michigan for an order requiring the governor to show cause why he did not issue his certificate showing that the Portage Lake and Lake Superior ship canal and harbor

have been constructed in conformity with the Acts of Congress making a land grant for the same, and the acts of the legislature of this State conferring the grant upon a corporation, which the relators now claim to represent.

When this application was first presented to the court, it declined to make the usual ex parte order until the question of jurisdiction was argued. This having been done on the voluntary appearance of counsel for the relators, and of the attorney-general on behalf of the governor, the question of jurisdiction was squarely submitted to the court.

The duty which the court was asked to compel the governor to perform was one imposed upon him by statute. The relators insisted that the question involved in this case was a purely judicial one, involving nothing but a proper construction of the law.

It was not claimed on the part of the relators that that court, or any other, had jurisdiction to require and compel the performance by the governor of his political duties, or the duties devolved upon him as a component part of the legislature. It was conceded that these duties, under the constitution and laws, were to be exercised according to own judgment and on his own sense of official responsibility, and that from his decision to act or decline to act there could be no appeal to the courts.

The relators submitted the following proposition to the court which was made the basis of the decision. They claimed that, "where the act is purely ministerial, and the right of the citizen to have it performed is absolute (vested right), the governor, no more than any other officer, is above the laws, and the obligation of the courts, on a proper application, to require him to obey the laws, is the same that exists in any other case where an official ministerial duty is disregarded."

It would be difficult to express the proposition in more absolute and emphatic terms. The court first considered the advisability of attempting to draw the lines between those duties of the governor which are political and those which are to be considered ministerial, and upon this point the court said:

"There is no very clear and palpable line of distinction between those duties of the governor which are political, and those which are to be considered ministerial merely; and if we should undertake to draw one, and to declare that in all cases falling on one side the line the governor was subject to judicial process, and in all falling on the other he was independent of it, we should open the doors to an endless train of litigation, and the cases would be numerous in which neither the governor nor the parties would be able to determine whether his conclusion was, under the law, to be final, and the courts would be appealed to by every dissatisfied party to subject a coordinate department of the government to their jurisdiction. However desirable a power in the judiciary to interfere in such cases might seem from the standpoint of interested parties, it is manifest that harmony of action between the executive and judicial departments would be directly threatened, and that the exercise of such power could only be justified on most imperative reasons. Moreover, it is not customary in our republican government to confer upon the governor duties merely ministerial, and in the performance of which he is to be left to no discretion whatever; and the presumption in all cases must be, where a duty is devolved upon the chief executive of the State rather than upon an inferior officer, that it is so because his superior judgment, discretion, and sense of responsibility were confided in for a more accurate, faithful, and discreet performance than could be relied upon if the duty were devolved upon an officer chosen for inferior duties.

"* * * * *

"We are not disposed, however, in the present case, to attempt on any grounds to distinguish it from other cases of executive duty with a view to lay down a narrow rule which, while disposing of this motion, may leave the grave question it presents to be presented again and again in other cases which the ingenuity of counsel may be able to distinguish in some minor particulars from the one before us. If a broad general principle underlies all these cases, and requires the same decision in all, it would scarcely be respectful to the

governor, or consistent with our own sense of duty, that we should seek to avoid its application and strive to decide each in succession upon some narrow and perhaps technical point peculiar to the special case, if such might be discovered."

In speaking of the apportionment of powers of government between the three great distinct coordinate departments, the court said:

"Our government is one whose powers have been carefully apportioned between three distinct departments, which emanate alike from the people, have their powers alike limited and defined by the constitution, are of equal dignity, and within their respective spheres of action equally independent.

* * * * *

"It has long been a maxim in this country that the legislature can not dictate to the courts what their judgments shall be, or set aside or alter such judgments after they have been rendered. If it could, constitutional liberty would cease to exist; and if the legislature could in like manner override executive action also, the government would become only a despotism under popular forms. On the other hand, it would be readily conceded that no court can compel the legislature to make or to refrain from making laws, or to meet or adjourn at its command, or to take any action whatsoever, though the duty to take it be made ever so clear by the constitution or the laws."

As the legislative and judicial departments, acting within their respective spheres, are so entirely independent, the court then proceeded to determine on what ground an intervention in the case of executive duties could be justified. As the court well said in this case, such intervention could certainly not be justified on the ground that the executive is only a single person, who need await the advice or consent of no one before proceeding to the discharge of his duty, and whose default will consequently be more palpable when he acts wrongfully or refuses to act at all, than the default of any member of an aggregate body, like a legislature or a court, nor can it be because the reference of a duty or authority to an aggregate body raises an implication that it is entrusted to its judgment or discretion any more than if it were referred for performance or exercise to one person only. Then, if intervention is ever justifiable it must be upon the ground of the nature of the act to be performed. Upon this point of the case the court said:

"One reason very strongly pressed why the governor is subject to process in cases like the present is, that the act required is not to be done in performance of an executive duty imposed by the constitution, but is in its nature a ministerial act, provided for by statute, and which might, with equal propriety, have been required of an inferior officer, who, beyond question, could have been compelled by mandamus to take the necessary and proper action in the premises. And the question is put with some emphasis, whether, when individual interests depend upon the performance of ministerial action, to which the party is entitled of right, the question whether there shall be a remedy or not can depend upon the circumstance that in the particular case the ministerial action is required of a superior officer when there is no reason in its nature why it might not have been required of an inferior.

* * * * *

"In many cases it is unquestionable that the head of an executive department may be required by judicial process to perform a legal duty, while in other cases, in our judgment, the courts would be entirely without jurisdiction; and, as regards such an officer, we should concede that the nature of the case and of the duty to be performed must determine the right of the court to interfere in each particular instance. When the head of a department acts as the mere assistant or agent of the executive in the performance of a political or discretionary act, he is no more subject to the control of the courts than the chief executive himself; but where a ministerial act is required to be done by him, independently of the executive, though in a certain sense he is an executive officer, it would be as idle to dispute his responsibility to legal process, as it would be to make the same claim

to exemption on behalf of an officer entrusted with similar duties of a lower grade.

* * * * *

"The apportionment of power, authority, and duty to the governor is either made by the people in the constitution, or by the legislature in making laws under it; and the courts, when the apportionment has been made, would be presumptuous if they should assume to declare that a particular duty assigned to the governor is not essentially executive.

* * * * *

"Were the courts to go so far, they would break away from those checks and balances of government which were meant to be checks of cooperation and not of antagonism or mastery, and would concentrate in their own hands something at least of the power which the people, either directly or by the action of their representatives, decided to entrust to the other departments of the government."

It was urged that should it be held that the governor could not be compelled to perform purely ministerial duties, that such a conclusion would leave parties, who have rights in many cases, without a remedy. In disposing of this question the court said:

"Practically there are a great many such cases, but theoretically there are none at all. All wrongs, certainly, are not redressed by the judicial department. A party may be deprived of a right by a wrong verdict, or an erroneous ruling of a judge, and though the error may be manifest to all others than those who are to decide upon his rights, he will be without redress. A person lawfully chosen to the legislature may have his seat given by the house to another, and be thus wronged without remedy. A just claim against the State may be rejected by the board of auditors, and neither the governor nor the courts can give relief. A convicted person may conclusively demonstrate his innocence to the governor, and still be denied a pardon. In which one of these cases could the denial of redress by the proper tribunal constitute any ground for interference by any other authority? The law must leave the final decision upon every claim and every controversy somewhere, and when that decision has been made, it must be accepted as correct. The presumption is just as conclusive in favor of executive action as in favor of judicial."

The court then declined to make any order to show cause.

Another leading case which supports the same proposition, that the courts have no jurisdiction to control the official acts of a State governor, is that of *Hawkins vs. Governor* (1 Ark., 570, 33 Am. Dec, 346), decided in 1839. In this case an act of the legislature declared "that there shall be elected by the general assembly a commissioner of public buildings," and that this official shall be commissioned by the governor. The applicant was duly elected, but the governor withheld the commission. In passing upon the question involved, the court, speaking through Justice Lacy, said (p. 347):

"The first question, then, submitted for our consideration and decision is, has the supreme court jurisdiction of the case? or is the governor of the State such an officer to whom the writ may be properly directed upon legal or constitutional principles?

* * * * *

"So far as this case (*Marbury vs. Madison*) can be considered as authority at all, it goes to disprove the position that the writ can legally be directed to the executive of the State (p. 349).

* * * * *

"All the officers of the government, except the President of the United States, and the executives (governors) of the States, are liable to have their acts examined in a court of justice. The president and executives (governors), by

the theory and practice of our peculiar systems of government, are exempted upon the ground of political necessity and of public policy (p. 351).

* * * * *

"A moment's examination of the structure and character of the executive department, will be sufficient to satisfy anyone, that all his legal or constitutional duties are political, and that he is only accountable for them to his country, and to his own conscience, in a political manner" (p. 358).

Another well-considered case supporting the same proposition is that of *Bates vs. Taylor* (11 S. W., 266), and which was followed in the later case, decided in 1905, of *State vs. Frazier, Governor* (86 S. W., 339). In the case of *Bates vs. Taylor*, a bill was filed to compel the governor of the State of Tennessee to deliver a certificate of election to the complainant and to prevent the issuance of one to another applicant. In passing upon the questions presented the court said:

"The main question debated at the bar, and that which is conclusive of the case, is one of jurisdiction. The constitution ordains that the governor of the State shall perform certain duties therein prescribed, and such others as may from time to time be devolved upon him by act of the legislature. Among the duties so devolved upon him by statute is that of issuing a commission or certificate of election to each person elected representative to Congress. The issuance of such commission or certificate, whether called a ministerial or an executive duty, is an official action, whose performance can be neither coerced nor restrained by the courts.

* * * * *

"We are fully persuaded not only that the weight of authority, but also the weight of reason, is against the power of the courts to coerce the chief executive of a State into the performance of any official duty.

* * * * *

"The statute devolving upon the governor the duty of issuing a commission or certificate of election necessarily confers upon him the right of determining when and how that duty, within the law, must be performed; and, when he comes to do the thing required, he must be allowed to do it according to his own judgment as to the meaning of the law, and on his own sense of official responsibility under his oath."

A case in which the court discussed the proposition that there can not be an injury without a remedy, is that of the *People vs. Bissell* (19 111., 229). In this case the court said (p. 232):

"It is urged upon us, that in a government of laws there must be an adequate remedy for every wrong, and that where a clear right exists, there must be some mode of enforcing that right. While human society is governed by so imperfect a being as man, this can be true only in theory. If we are to compel the governor or the legislature to right every wrong which may arise from their omissions of duty, then surely they must, in order to make this Utopian system perfect, have the power to compel us to do right in every case. May it not be as well supposed that we will act perversely, and refuse to perform a duty imposed upon us, to the injury of the citizen, as that the governor will do so? In the formation of the government, equal confidence was rightfully reposed in each department, to which appropriate and independent duties were assigned."

A case showing the difficulties which would arise if the courts were to attempt to differentiate between ministerial and discretionary acts of the governor comes from the civil law, *State of Louisiana. (State vs. Warmoth, 22 La. Ann., 1.)* In this case the court said (p. 4):

"Circumstances may arise and conditions may exist which would require the governor of a State, in the proper exercise of his duty, and with regard to the interests of the State, not to perform a ministerial act. Is the judge to determine his duty in such a case and compel him to perform it? The reasons of the executive for the

nonperformance of an act the judge may never know, or if brought to his knowledge, he may review and overrule them, and, in so doing, assume political functions."

In the case of *People vs. Cullom* (100 111., 472), the substantial facts were as follows: The county judge of Ogle County resigned his office. The governor was notified of the resignation and appointed a judge to fill the vacancy. A petition was presented to the governor asking him to call a special election on the ground that under the constitution he had no power to appoint. The governor refused to call an election and mandamus was asked to compel him to do so. The court, without discussion, based its opinion upon the case of *People vs. Bissell* (supra), and denied the petition.

We think that the weight of authority, based upon legal principles and sound reasoning, supports the proposition that in the United States the supreme courts of the States do not have jurisdiction to control the official acts of the governor. For better reasons we conclude that this court has no jurisdiction, either by mandamus or injunction, to control the official acts of the Governor-General, inasmuch as we have seen that his duties, powers, and responsibilities are more comprehensive than those conferred upon any State Governor. When the Philippine legislative body confers upon the Governor-General powers and duties, it does so for the reason that he is in a better position to know the needs of the country than any other member of the executive department, and with the full confidence that he will perform such duties, under his official oath, as his best judgment dictates. If this had not been the intention of the Legislature, they could have placed the duty upon some other official of the executive department. It no doubt is sometimes very necessary for the Governor-General to perform certain important executive duties without delay, and should this court attempt to distinguish between purely ministerial and discretionary duties, conferred upon him by law, and attempt to determine in each case which are purely ministerial, which are political, or which are discretionary, the Governor-General, to that extent, would become subservient to the judiciary. To avoid this is why the three great coordinate departments of the Government were created and made independent of each other. President McKinley in creating civil government in this country took into consideration these fundamental principles of separate and independent departments, which have been demonstrated to be essential to a republican form of government, and conferred upon the Governor-General, as the Executive of the Philippine Islands, the power to execute the laws according to his best judgment, holding him responsible to the President of the United States, without interference on the part of the judiciary. In so doing he reposed in the Executive of this country great confidence, realizing that he, the Executive, acting independently of the judiciary, would be in a better position to carry out the great underlying principles of American institutions for the peace and happiness of the inhabitants of this country. The President realized that the final decision of every question in controversy must be left somewhere, and when such decision has been made it must be accepted as correct. The presumption is just as conclusive in favor of executive action, as to its correctness and justness, as it is in favor of judicial action.

It is argued that if the courts have no control over the official acts of the Governor-General, the Government would become one of men and not of laws. If this is true, why is it not also true that if the judiciary, which is composed of men, can enter the field assigned to the Chief Executive and determine what are his political, ministerial, and discretionary duties, the Government, to that extent, would become one of men and not of laws?

In the case at bar we are called upon to compel the Governor-General to call a special election in the town of Silay for the purpose of electing a municipal president. We are not disposed, neither will we attempt on any grounds, to distinguish this case from any other case of executive duty, with a view, as was said in the case of *Sutherland vs. Governor* (supra), "to lay down a narrow rule which, while disposing of this case, may leave the grave question it presents to be presented again and again in other cases." But after due consideration, and being fully aware of the seriousness of the question, we have reached the conclusion that we have no jurisdiction to interfere with the

Governor-General of these Islands, as the head of the executive department, in the performance of any of his official acts.

For the foregoing reasons we conclude:

- That the preliminary injunction prayed for in this case should not be issued;
- That the facts alleged in the complaint do not constitute a cause of action; and,
- That we can not and should not entertain a complaint which seeks to control or interfere with the official duties of the Governor-General

The demurrer is, therefore, sustained, and the complaint dismissed, without special ruling as to costs.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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