Critical Study of Article VI, Section 4 of the Constitution of the Philippines

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INTRODUCTION

A study of that body called Electoral Commission in our Constitution, is attempted here. It starts from getting a bird's eyeview of its prototypes in the European countries and in the United States which were largely influential in bringing about its birth in our soil, with a view to a further understanding and the studying of the role of the Electoral Commission and its place in our governmental system.

In arriving at the conclusion, after a studied discussion of the subject-matter, the fact that the Electoral Commission is placed in the Constitution under the caption "Legislative Department" is disregarded. This attitude is taken because it is believed that the Electoral Commission was placed under that caption "Legislative Department" for want of a better place and because it is the result of the desire among the framers in the Constitutional Convention to remedy an evil. The Electoral Commission, as a means by which the settling of election disputes would be placed far above partisanship and suspicions, was the objective of the framers of the Constitution, and since the fact that prior to its creation the power which it now exercises belonged to the Legislature, it is reasonable to expect that this body should be placed under the caption "Legislative Department" in our Constitution, notwithstanding the intention to place it entirely out of the proceedings of the Legislature. The Electoral Commission is peculiar because it acquires at once a legislative and judicial coloring. It is for this reason that this work is undertaken in order to classify or identify this body, called the Electoral Commission, in our governmental system.

A. DEFINITION OF TERMS:

1. *Contested elections*

Contested election has no technical or legal definition. (20 C. J. 58). It is purely statutory. An election may be said to be contested whenever an objection is formally urged against it, which if found to be true in fact will invalidate it. However as used in constitutional provision, the expression relates only to statutory contests in which the contestant seeks not only to oust the intruder, but also to have himself inducted into office. (Laurel, The Election Law, [1931], 396; 20 C. J. 58).

2. *Returns*

Returns means the statements or reports of the balloting at an election by the proper officers. (Bouvier's Law Dictionary, [1928] 1068). They are such documents as the law requires from the officers conducting an election as evidence of its results. Such returns stand as prima facie evidence of the result of the election until they are overcome by affirmative evidence

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of their error. (1 Cyclopedia of American Gov't. [1914] 651).

3. *Qualifications*

This term means the endowment or acquirement which renders one eligible to a place or position. (52 Mass. 672; 64 Mo. 89; Bouvier's Law Dictionary [1928] 1006). It relates to fitness or capacity of a party for a particular pursuit or profession. (4 Wall. 319; Bouvier's Law Dictionary, id.). It has been held not only to imply the presence of every requisite demanded but the absence of every qualification imposed.

B. NATURE OF PROCEEDINGS IN AN ELECTION CONTEST

1. *Is it an action?*

An action is a formal demand of one's legal right in a court of justice in the manner prescribed by the court or by the law. (People vs. County Judge, 13 How. Pr. [N. Y.] 398). According to our law (Section 1 of Act 190) "action" means "an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right or the redress or prevention of a wrong; every other remedy furnished by law is a special proceeding." Superficially, an election contest is brought for the enforcement or protection of the right of an individual who alleges himself to have been deprived of a place in the government machinery. A further scrutiny will show that the right which such individual is trying to enforce is not one which is vested in him basically but only on a supposition of right which might have been his were it not for some anomaly. Rather, an election proceeding is "a proceeding to establish the status or right of a party or a particular fact, (Hajans vs. Wislezenus, 42 Phil. 880,882) which if found to be true in fact will invalidate it. (20 C. J. 58). Moreover, our Philippine Supreme Court has said that "an election contest is a proceeding designed to contest the right of a person, declared elected to enter upon and hold office." (Gordiner vs. Romulo, [1914] 26 Phil. 521, 524).

2. *Is it a special statutory proceeding?*

It is an adversary proceeding; a controversy between two contending candidates for the same office. It is not a civil action at law nor a suit in equity; it is a summary proceeding of a political character. However, with the creation of the Electoral Commission, the proceedings in an election contest has taken a new form and a new meaning in our Constitutional history, heretofore claimed to be unprecedented. It is usually instituted within a prescribed period after the election by or on behalf of, the unsuccessful candidate, for the purpose of establishing his right to the particular office in controversy. (20 C. J. 57).

Generally, therefore, an election contest is purely statutory, except when, as in our case, it is constitutionally provided for. It is never inherent in the right of suffrage to contest an election, but it is a right of one or more of the contending candidates to question the right of the other successful candidate to hold and enter to office.

THE PROTO-TYPES OF THE ELECTORAL COMMISSION

A. IN EUROPE AND IN THE UNITED STATES

Before we deal with the Philippine Electoral Commission, we shall attempt to have a cursory view of its prototypes as found in the countries outside of the Phil-

ippines. Their workability in those countries has inspired the members of the Constitutional Convention, to create the Electoral Commission as a remedy of doing away with the many experiences not altogether pleasing to the electors as well as to the members of the legislature and contestants. The transfer of the power of determining the election, returns and qualifications of the members of the legislature, long lodged in the legislative body, to an independent, impartial and non-partisan tribunal, is by no means a mere experiment in the science of government. (Angara vs. Electoral Commission, G. R. No. 45081, 1936).

Looking over the Constitutional Charter of Czechoslovakian Republic, Chapter 2, we find that Article 19 of said charter (passed on Feb. 20, 1920) provides that "an electoral court shall determine the validity of election to the Chamber of Deputies and the Senate. Paragraph 2 of the same article leaves the details to be regulated by law. (Andrews, 12 Leading Constitutions with their Historical Background, 10). It will be noted that the body that decides election contests is entirely separate and distinct from the legislative body. This assertion is supported by another provision in the constitution (Article 20 paragraph 5, last sentence of the Constitutional Charter of Czechoslovakian Republic, id.) which provides that "associate judges of the Electoral Court may not at the same time sit in the National Assembly." From this it can be gleaned that the Electoral Court is composed of those who are disqualified to sit as members of the National Assembly; and its head may or may not be a member of the legislature. The Electoral Court in Czechoslovakia is therefore linked with the National Assembly by the nature of actions taken into it and by the fact that its head may be a member of the legislative body.

The German Constitution provides for a more elaborate procedure for settling election disputes. The Constitution of the German Reich, Part I, Article 31, Section 2 provides that: (Andrews, 12 Leading Constitutions with their Historical Background, 80).

"A Court of Inquiry into Elections is established in connection with the Reichstag. It also decides the question as to whether a Deputy has forfeited his membership.

"The Court consists of members of the Reichstag chosen by it for the electoral period, and of members of the Administrative Court of the Reich, appointed by the President of the Reich, upon the motion of the presiding officer of that Court.

"The Court gives judgment after public 'viva voce' investigation by the three members of the Reichstag and two judicial members.

"Apart from the investigation before this Court, the proceedings are conducted by an official of the Reich, appointed by the President of the Reich. Further provisions as to procedure are determined by the Court."

It will be seen that the electoral court of the German Republic is composed of representatives from the legislative and administrative department. Although the judgment is to be rendered by a body composed of legislative and executive elements in the government machinery, the decision is based upon an investigation conducted by the members of the legislative department and by members of the judicial branch. Apart from the investigations made by the legislative and judicial branches of the

government, the third branch of the government that is, the executive branch, also conducts an investigation into the election dispute. The election disputes in Germany are therefore very minutely scrutinized in order to give due fairness, credit and justice to the rightful member and to place the Electoral Court above suspicion.

The country of Poland distinguishes the kind of election disputes that must be settled and the body to settle them. Hence, "the validity of uncontested election is decided by the Diet", and "the validity of contested elections is decided by the Supreme Court." (Constitution of the Polish Republic, Chapter II, Article 19, id.) This provision of the Polish Constitution is notable as there is no other country in Europe which provides for a separate body to decide uncontested elections, and another body to decide on contested elections. It is the judicial branch and only the Supreme Court which decides the election contests.

In England, there was a struggle on the question as to which body should settle election disputes. This became very apparent when a dispute arose between James I and the House of Commons in 1604 over the election of an outlaw, named Goodwin. To settle the dispute a compromise was effected. The House of Commons exercised the right to determine such questions from 1604 to 1808. However, the growth of party government did much to influence the settling of such disputes such that disputed election returns were settled purely by party votes. In 1770 Grenville's Act transferred the decision to a committee chosen by lot. (Wade and Phillips, Constitutional Law). The decision of this committee labored under the suspicion of being prompted by party feelings, and by the Parliamentary Act of 1868 the jurisdiction was transferred to the judicial branch of the government notwithstanding the general unwillingness of the bench to accept a class of business which they feared might bring their integrity into dispute. The trial of petitions to contest the election was conducted by the two judges of the High Court sitting in the borough or county in which the election took place. The determination of the court is notified to the Speaker and is entered upon the journals of the House. (Wade and Phillips, Constitutional Law, 1-7).

The manner of settling election disputes is provided for by Fascist Italy in its fundamental laws, Part II, found in the Law of May 17, 1938, Number 1019, Article 17, which provides as follows:

> "The Court of Appeals of Rome, composed of the first president and four presidents of sections, constitutes the national electoral committee."

The role of the Court of Appeals is only to sit as an electoral court. Its function is purely to declare who are elected members and if no majority of votes are gathered for a given list of candidates submitted to the electorate it has the power to order for another election and set the date thereof. (Andrews, 12 Leading Constitutions with their Historical Background, 163-167).

In the United States, the provision for final determination of election disputes is found in Article I, Section 5, paragraph 1 of the Federal Constitution. It provides that "each house shall be the judge of the election returns and qualifications of its own members." Though the power to be the judge

of the election, returns and qualifications is entirely unlimited in each house, the United States has at one time or another resorted to remedies similar to our present Electoral Commission. By an act of January 29, 1877 an electoral committee of 15 was created to settle the dispute of the electoral votes of the states of Florida, Louisiana, South Carolina and Oregon in the presidential election of 1876. The fifteen members were composed of members of the Senate and of House of Representatives and of justices of the Supreme Court. This extra-constitutional tribunal was to consider such cases with the same powers, if any, possessed for that purpose by the two houses acting separately or together. The decision was to stand unless rejected by the separate vote of both houses. Although there is not much moral lesson to be derived from the experience of America in this regard, the experiment has at least an abiding historical interest. (Angara vs. Electoral Commission, G. R. No. 45081, 1936).

B. IN THE PHILIPPINES

1. *Is the Electoral Commission A New System in Our Constitutional History?*

The fact that the legislative body passes upon all questions regarding membership, returns, qualifications and legality of election proceedings is a conceded truth in a republican form of government. The Philippine Bill of 1902, Section 7 provides that the "assembly shall be the judge of the election, returns and qualifications of its members." And the Jones Law, Section 18 provides "that the senate and house of representatives, respectively shall be the sole judges of the election, returns, and qualifications of their elective members." These are taken from the provisions of the Constitution of the United States. It is claimed that the provision creating the Electoral Commission is a new thing in our constitutional development. However, an examination of the provisions of the Malolos Constitution reveals that there could have been a body similar to the Electoral Commission. The business of literature regarding our constitutional history, particularly the short-lived republic prior to the implantation of democracy in our soil, leaves the question of the manner of settling election disputes under the Malolos Constitution a purely conjectural matter. A perusal of the articles of the Malolos Constitution will enlighten our views on the matter.

Article 47 of the Malolos Constitution gave to the National Assembly the power "to examine the legality of the elections and the legal qualifications of its members elect." The imperativeness of the fact of legality of the right of a member to sit in the National Assembly is asserted in Article 48. It says:

> "No bill shall become law without having been previously voted upon by the Assembly.
>
> "In order to pass any law, there must be present in the Assembly at least a fourth part of the total number of members whose certificates of election have been approved and who have taken the oath of office."

It is very clear therefore that the National Assembly determines the legality of the election and qualifications of its members, and that among other things it does not consider a law passed with the stamp of legality unless the members who participated in its enactment are legally qualified to sit in the legislature, by virtue of the approval of the certificate of elec-

tion and by the oath of office. Bearing this in mind, let us come to the next point.

The Assemby shall meet for a period of at least three months each year without including in this time that which is required for its organization. Now, suppose that the legal right of a member to sit in the National Assembly is questioned and the session of the assembly is ordered closed by virtue of the prerogative of the President of the Republic given to him by the Constitution, who settles the question?

Article 54, Title VI provides that: "the assembly before adjournment, shall elect seven of its members to constitute a permanent commission during the period that it is closed." Article 55 of the same title empowers the permanent commission the following:

"In the absence of the Assembly, the Permanent Commission shall have the following powers:

"1. To declare whether or not there is sufficient reason to proceed against the President of the Republic * * * the Representatives, provided for by the constitution.

"2. . . . . .

"3. To give course to business that may have been *pending* in order that it may be considered. * * *

"4. . . . . .

"5. To take the place of the Assembly *in all its functions according to the Constitution* with the exception of the right to make and pass laws."

Taking these provisions in the light of the question propounded and in all election cases, and taking into consideration the amplitude of the powers given to the permanent commission, except the right to make and pass laws, it is a logical and irresistible conclusion by implication, that the permanent commission is in respect to settling election cases a body similar to our present Electoral Commission. It is conceded that there was no actual provision in the Malolos Constitution on this subject, but the carrying out the effect of these provisions does not preclude the question of the permanent commission as an Electoral Commission. It is only lamentable that the Republic was short-lived.

BRIEF SKETCH OF THE HISTORY OF THE ELECTORAL COMMISSION

A. GENERAL CONDITIONS BEFORE THE EXISTENCE OF THE ELECTORAL COMMISSION

The dignity, integrity and high estimation of a position held by a person invested with public trust by popular will is too well-known to be ignored. The importance of holding an elective office is such that it has always given rise to constant wranglings and disputes among contestants. According to the observation of political scientists, considering that we have been under the rule of a monarchy for three hundred years, election of officials has become an institution in the brief span of forty years since the implantation of United States sovereignty. Election contests have gone deep into our system beyond the expectations of our teacher of democracy. Election disputes had been observed to have become family feuds, a cause of animosity among otherwise friendly neighbors and ultimately a cause for serious litigations in the courts.

The attempt to seek justice had become a paradox in the eyes of the public. Strong partisanship and its greatest influence in the settling of election disputes such that it had always been the frequent subject of attack by the press specially. The undue delay in the dispatch of contests and the very apparent injection of party

influence and control without mentioning the irregularities that characterized the proceedings in some of them were denounced by voters from all walks of life. (1 Aruego, The Framing of the Constitution, 258). It had caused the breeding of discontent among the lesser informed class.

The need of a clean and healthy determination of election disputes was greatly felt.

B. THE CREATION OF THE ELECTORAL COMMISSION

1. *Report Submitted by the Committee on Constitutional Guarantees on Sept. 15, 1934.*

The need for reform in our election system sought expression in the Constitutional Convention. The first of this attempt was the report submitted by the Committee on Constitutional Guarantees on September 15, 1934, headed by Mr. Manuel Lim. The Committee on Constitutional Guarantees proposed that "after an extended, careful and conscientious deliberation it has decided to support the creation of a special *regulating* and *compromise body*, composed of members selected from the three different branches of the government: * * * conferred with the jurisdiction to hear and determine (impeachment) * * * election contests not only against the Chief Executive but against the members of the Legislature * * *" (2 Aruego, The Framing of the Philippine Constitution, 880-881, Appendix G.) The Committee was guided by precedents found in other countries of Europe and the United States and by the fact that the determination of election protests requires a true judicial attitude. The body proposed by the Committee to decide on election protests is the "Tribunal of Constitutional Security" which shall have exclusive, supreme and definite jurisdiction and competence to decide * * * election protests. The Tribunal of Constitutional Security shall be composed of three justices of the Supreme Court, two senators in the Senate, two congressmen from the House of Representatives, and two representatives of the executive power. It shall be presided by the senior justice of the Supreme Court. It will be noticed that the tribunal of Constitutional Guarantee is similar to the German Court of Inquiry into Elections by the presence of the three elements of the government in the determination of election protests. The jurisdiction of the Tribunal of Constitutional Guarantee extends even over the election of the Chief Executive. It will be gathered from the report of the Committee on Constitutional Guarantees that the problem of election disputes has reached a proportion that it was considered a subject fit to be deliberated upon and initiated by the Committee responsible for the safeguarding of the constitutional guarantees of the people. It will be noticed that the settling of election disputes has acquired the same importance and the level as the institution of impeachment.

2. *Report Submitted by the Committee on Legislative Powers on September 24, 1934.*

On September 24, 1934, the Committee on Legislative Power headed by Mr. Manuel C. Briones submitted, with the same purpose of reform, the following proposal:

"Elections and Qualifications of Members.

"5. The elections, returns and qualifications of the members of either House

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

In this proposal, only the elements of the government machinery are present, namely, the legislative and judicial branches. There is also a new element in this proposal, that is the number of members from the legislature to compose the Electoral Commission is based on the party votes garnered in the elections. The judicial element in this proposal is rather weak, because it has only one representative. Although he is given the honor of presiding over the body, his opinion is not holding unless he has the support of three members to make a majority. Party influence is present, which is precisely the thing sought to be eradicated.

3. *Opposition to the creation of the Electoral Commission.*

The proposal for the creation of that body called the Electoral Commission suffered bitter denunciation from the older and conservative elements of the Constitutional Convention. One of its bitterest opponents for its birth was Delegate Alejo Labrador who said that:

"Protests will be filed against the members of the Assembly. At this juncture the function of the Electoral Commission will immediately assume importance as upon its decision will entirely depend which of the political parties will rule or control the Assembly. Unscrupulous as are political parties in the methods of obtaining political supremacy, movements shall be set afoot by the rival ones, first to secure from the Chief Justice the appointment of justices sympathetic to their own respective causes, and later to win the justices appointed to their respective sides. And so while the Electoral Commission is in the statute books, political parties will always compete with one another in giving terms, political or otherwise, to the Supreme Court as a body, or to the justices individually. In hotly contested and close election, this race for favor shall reach no limits, for then woe be to the party that has not merited the favor or the sympathy of the justice of the Supreme Court; it shall always lose its contested seat in the National Assembly. So shall political parties become subservient, impotent, and in turn the National Assembly controlled and managed by them.

"In normal times, things run smoothly and the machinery of governments not subjected to a rigid test; hence the excellence of the Electoral Commission cannot be judged except when put to test in extraordinary times, in times of great political excitement. Let us suppose that a closely contested general election has just been finished, and a party succeeds in electing a majority or plurality of favor or to seats over the next largest party in the Assembly. By reason of the closeness of the election results, charges of fraud in the elections will be launched by one party against another, and no less than say 9 out of 10."

Delegate Ruperto C. Kapunan came up with the following reasons, in support of the opposition led by Delegate Alejo Labrador: 1st, That experience has shown that the Supreme Court which is an element in the creation of the proposed Electoral Commission is not held as a body that cannot commit such "unfortunate and deplorable errors"; 2nd, That the Supreme Court is not a body that is not also subject to attack by public opinion, from complaints reasonable and otherwise; 3rd, That in countries where there exists a separation of powers, the Supreme Court is the last bulwark where people seek refuge in the event of tyranny of the majority; and lastly, it would just strip the Supreme Court of its prestige and dignity and integrity in the eyes of the public in general. (1 Arue-

go, The Framing of the Philippine Constitution, 266).

4. *The Preliminary Draft*

The point of difference between the proponents and opponents of the creation of the Electoral Commission centers on the question of the doctrine of separation of powers and the amplitude of the powers of the Electoral Commission. Notwithstanding the strong opposition the sub-committee of seven, with the cooperation of the sub-committee of technical advisers and of the speakership committee, inserted in the preliminary draft of the Constitution a provision creating a body in the legislative department to be known as the Electoral Commission. The pertinent provision, Article VII, Section 3, paragraph 6 of the First Draft of the Constitution, was submitted by the Sponsorship Committee for the consideration of the Constitutional Convention on October 26, 1934. It provides that:

"The elections, returns and qualifications of the members of the National Assembly and all cases contesting the elections of any of its members shall be judged by an Electoral Commission, composed of three members elected by the party having the largest number of votes in the National Assembly, three elected by the member of the party having the second largest number of votes and three justices of the Supreme Court designated by the Chief Justice, the Commission to be presided over by one of said Justices." (Aruego, The Framing of the Philippine Constitution, Vol. 2, Appendix H, [1937] 977.)

It will be noticed that the judicial representative is increased from one, as provided for in the draft submitted by the Committee on Legislative Power, to three as provided for in the preliminary draft of the Constitution and at the same time retaining the idea that the body should be presided over by one of the justices appointed to sit in the Electoral Commission.

A cursory reading of the preliminary draft regarding the powers of the Electoral Commission, as compared with that draft submitted by the Committee on Constitutional Guarantees, show that the powers named therein are broad to cover up not only to judge contests regarding the election, returns, and qualifications of any of the members of the National Assembly, but also to pass upon the credentials of the members, to investigate and determine the legal eligibility or qualifications, to investigate the corrupt and illegal practices which may come to its knowledge regarding the election of the members whether contested or not.

This was one of the main objections in the creation of the Electoral Commission.

5. *The Compromise Plan and the Adoption of the Electoral Commission in the Constitution.*

Seeing the determination of the members to embody in the Constitution a provision for the creation of the Electoral Commission and the strong opposition by the older and conservative elements in the Convention, a compromise plan was submitted by Delegates Francisco, Ventura, Lim, Vinzons, Rafols and Mumar. The compromise plan amended the preliminary draft to read as follows:

All cases contesting the elections, returns, and qualifications of the members of the National Assembly shall be judged by an electoral commission * * *" (1 Aruego, id; Appendix, 271)

In this proposal, the powers of the Electoral Commission were limited to cases regarding the

election, returns and qualifications of members which are contested. Hence, even if there are objections over the election, returns or qualifications of any member, if it is not properly contested. The Electoral Commission has no jurisdiction. This change in the phraseology of the provision, won over many of the oppositors to the creation of the Electoral Commission, so much so, that the amendment pervaded in the later drafts and in the final form. Another attempt was made by Delegate Labrador to retain the power of the legislature to be the sole judge of election, qualifications and returns of members, in the form of an amendment to carry into effect his opposition. A nominal vote was taken and Delegate Labrador's proposal was defeated by 98 negative votes against 50 affirmative votes. (1 Aruego, id; 271). This was the last step taken to brush away every opposition for the birth of the new element in our constitutional history.

The final draft as inserted in the Constitution reads as follows:

"There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The Senior Justice in the Commission shall be its Chairman. The Electoral Commission shall be the *sole judge* of all contests relating to the election, returns and qualifications of the members of the National Assembly."

The changes made in this final draft as compared with the amended preliminary draft consists in designating the Senior Justice of the three justices appointed to sit in the Electoral Commission, as its Chairman, and of giving the Electoral Commission the exclusive jurisdiction to be the sole judge of all contests regarding election, returns and qualifications of the members of the National Assembly.

Generally speaking, our Electoral Commission is similar to its proto-types in the European countries and in the United States, in that the determination of election contests is alloted to a body other than the Legislature. The presence of representatives from two or more branches of the government as one of the chief characteristics of the Electoral Court, has also been injected in our Electoral Commission.

GENERAL ANALYSIS OF ARTICLE VI, SECTION 4 OF THE CONSTITUTION OF THE PHILIPPINES

A. COMPOSITION

1. *Determination of Membership*

a. *Legislative*

The determination of the membership of the Electoral Commission is left by the Constitution to the National Assembly and the Judiciary. The Constitution provides that of the six other members chosen by the National Assembly to compose the Electoral Commission, three shall be nominated by the party having the largest number of votes and three by the party having the second largest number of votes. This distribution is based upon the theory of equal representation, for the majority and minority parties in the National Assembly in the Electoral Commission. This theory of equal representation of parties is true only for the parties polling

the first and second largest number of votes. The ticklish question arises when a third party comes in with barely a few votes less than the party having the second largest number of votes. Obviously, from the examination of this provision of the Constitution such third party is not entitled to be represented in the Electoral Commission for the simple reason that the Constitution provides for the representation of only two parties. This is depriving the third party a right to which it should be equally entitled. Another question arises when the greater number of party votes are polled by one or by comparatively few members of the National Assembly. These comparatively few members could be represented in the Electoral Commission as against a greater number of members whose aggregate number of party votes is less than the second largest. Suppose two of the parties in the National Assembly tied for the first or second place, according to the number of votes, shall it be decided by a flip of the coin?

Neither the Constitution nor the Rules of the Electoral Commission adopted on December 18, 1935, provides for the basis upon which the party votes shall be counted; nor was it discussed in the Constitutional Convention.

Suppose two minority parties, after the election fused or consolidated such that it could be claimed that they polled the largest number of votes, can they legally nominate three members to the Electoral Commission? An examination of the Constitution will show that they could legally do so.

The determination of the number of votes of parties polling the first or second largest number was brought up in the Constitutional Convention. The following excerpts shows the intention of the framers:

"Delegate Joven:

Supposing that there are three members protested or whose elections are protested, will these three members be considered in determining the number which party received the greatest number of members in the Assembly?

"Delegate Roxas:

While their seats have not been vacated they are considered prima facie members of the Assembly, and their votes will be counted."

b. *Judicial*

The tempering element in the Electoral Commission are the representatives of the judicial branch. These are the three Justices of the Supreme Court who are to be designated by the Chief Justice. The presence of this element in the Electoral Commission, it is believed, would inspire confidence, faith and respect in the decisions of the Electoral Commission. The Senior Justice is the presiding officer. It is to be noted that if it is assumed for the time being that the Electoral Commission is a part of the Legislative body, the question of propriety of the Judicial branch to preside over the legislative branch would easily strike the mind.

2. *Nature of the Membership*

The members from the Legislative body when they sit in the Electoral Commission are temporarily divested of their legislative powers. They exercise a judicial function. They act as a judicial body. This is an exception to a fundamental rule in a republican form of government that judicial function cannot be given to non-judicial officers. (Labiano vs. McMahon, 28 Phil. 168).

B. JURISDICTION

1. *Nature*

The jurisdiction of the Electoral Commission is vested upon it by the Constitution. The provision of the Constitution reads thus:

> " The Electoral Commission shall be the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly."

The jurisdiction of the Electoral Commission is original, limited and exclusive. It is original because election protests are brought to it at the first instance. It is limited because the Constitution specifies that it shall sit only to judge contests relating to the following subjects, to wit: election of members, the returns of the provincial boards of canvassers regarding the votes obtained, and the qualifications of candidates-elect. It is exclusive because the Constitution provides that the Electoral Commission shall be the "sole judge." The meaning of being the 'judge' was very well stressed in the Constitutional Convention to erase every doubt as to its import. Upon the question by Delegate Francisco Ventura as to "whether the election and qualification of the members whose election is not contested shall also be judged by the Electoral Commission," Delegate Manuel Roxas replied that "the word 'judge' is used to indicate a controversy. If there is no question about the election of a member there is nothing to be submitted to the Electoral Commission and there is nothing to be determined." To be the "sole judge" was meant according to the deliberations in the Constitutional Convention "to give to the Electoral Commission *all* the powers exercised by the Assembly referring to elections, returns and qualifications of the members."

2. *Over the persons*

The Constitution and the Rules of the Electoral Commission is silent as to who may protest the membership in the National Assembly. At first blush, it may be advanced that any person who exercises the right of suffrage as an indisputable natural right may protest against the election of one member in the legislature. Even if the people possess the right of suffrage as an indisputable natural right, the exercise of this right by the citizens is limited to those who have the qualifications of a voter; and even if he is a voter, the capacity to initiate an action against the election of a member of the National Assembly is a privilege that must be exercised by citizens who, under the Constitution and the law are eligible to represent the electoral district. It is not inherent in citizenship. It is not an individual prerogative guaranteed constitutionally. It is not a right. It is a fedeicommiso that must be entrusted only to determinate persons. It is a public function, and a public function is a privilege that cannot be conferred upon everybody. In order therefore that a person may legally protest the election of another to sit in the National Assembly, the protestee must be one who has filed the required certificate of candidacy. Thus, one who has not filed his certificate within the legal period does not have the right to interpose a protest. (Veridiano vs. Villaflor, et al—Election Protest No. 18, 1936 IV L. J. 282).

The doctrine of the Supreme Court which declares, in interpreting the election law in force, that the existence of a proclamation of the candidate-elect is essential in order that a protest may be filed, is applicable to Rule 8 of the Rules of the Electoral Commission in view of its analogy to the text of section 479 of the Administrative Code. The Constitutional and legislative antecedents and the preliminary draft and the draft which served as basis in the preparation of article 4 of title 6 of the constitution confirm the theory that the existence of a member proclaimed elected is essential to the jurisdiction of the Electoral Commission. (Navarro vs. Diez, supra).

3. *Over the subject-matter*

The text of the Constitution is unequivocal in its terms that the subject-matter of proper consideration before the Electoral Commission are those which refer to "all contests relating to the election, returns and qualifications of the members of the National Assembly" (Article VI, section 4, last sentence, Constitution of the Philippines). There must be a "contest" in the legal meaning of the word, and the subject of the contest is either *election, returns,* or *qualifications* of the members of the National Assembly. In order that there may be a 'contest' it is necessary that one of the adversaries shall have been proclaimed elected. (Navarro vs. Diez, IV L. J. 479). However, the confirmation of the election of the members of the National Assembly is not necessary to bring the contest within the jurisdiction of the commission. Neither is the resolution confirming the election of members produce the effect of preventing the presentation of an election protest subsequent thereto, nor deprive the Electoral Commission of its jurisdiction to try that protest, although it has been presented after the confirmation but within the period fixed by the Electoral Commission. (Ynsua vs. Angora, Electoral Protest No. 26, 1936, IV L. J. 326). Under section 18 of the Jones Law, a resolution confirming or approving the returns of members against whose election no protest has been filed was interpreted as cutting off the filing of further protests against the election of those members not therefore contested. (Angora vs. Electoral Commission, supra; Amistad vs. Claravall (Isabela) Second Philippine Legislature, Record—First Period p. 89; Argalla vs. Rama, (Third District, Cebu) Sixth Philippine Legislature, Fetalvero vs. Festin (Romblon) Sixth Philippine Legislature, Record—First Period pp. 637-640; Kintanar vs. Aldanese (Fourth District, Cebu), Sixth Philippine Legislature, Record—First Period pp. 1121-1122; Aguilar vs. Corpus (Masbate) Eighth Philippine Legislature, Record First Period, Vol. III No. 56, p. 892-893). The Constitution has expressly repealed section 18 of the Jones Law. (Angora vs. Electoral Commission, G. R. No. 45081, 1936). The resolution of the National Assembly confirming the election of members against whom no protests has been filed cannot be construed as a limitation upon the time for the initiation of election contests. (Angora vs. Electoral Commission, id.)

To bring the case within the jurisdiction of the Electoral Commission, election protests must be

filed *after* the proclamation of the results of the election by the provincial board of canvassers. (Rule 8, Rules of the Electoral Commission, December 18, 1935). Hence, while an adversary may know the results of the canvass of votes in his district he cannot protest the election of the other adversary unless the provincial board of canvassers shall have first proclaimed the results of the election. From the moment of the proclamation of the results of the election by the provincial board of canvassers the protestant has fifteen days within which to file the protest in the Electoral Commission. (id.)

The subject-matter of the protest or contest is limited by the Constitution to 'election', or 'qualification' or 'returns'. The original provision regarding this subject in the Act of Congress of July 1, 1902 (Section 7, paragraph 5) laying down the rule that "the assembly shall be the judge of elections, returns, and qualifications of its members" was taken from clause 1, of section 5, Article I of the Constitution of the United States providing that "Each House shall be the judge of elections, returns and qualifications of its members" The Act of Congress of August 29, 1916 (section 18, paragraph 1) modified this provision by the insertion of the word "sole" as follows: "That the Senate and House of Representatives respectively, shall be the sole judge of the elections, returns, and qualifications of their elective members. ", apparently in order to emphasize the exclusive character of the jurisdiction conferred upon each House of the Legislalature over the particular cases therein specified. This grant of power to the Philippine Senate and House of Representatives is full, clear and complete. (Veloso vs. Board of Canvassers of Leyte and Samar (1919) 39 Phil. 886, 888). The grant of power to the Electoral Commission to be the sole judge of all contests relating to the election, returns and qualifications of members of the National Assembly is intended to be as complete and unimpaired as if it had remained originally in the Legislature. Hence, the Electoral Commission may cause the registration lists, ballot boxes and other document used at such election to be brought before it and to be examined by the body. (Sec. 479 Administrative Code, 1917). It is believed that question of law not directly covered by the given subjects in the Constitution cannot be taken up by the Electoral Commission, as it would extend the meaning of the terms employed by the Constitution, giving ground to pernicious confusions and a pretext to break with impunity constitutional precepts. To declare that the Electoral Commission has jurisdiction over controversies between simple candidates for membership is to confer to the Commission powers which belong to ordinary courts of justice. (Navarro vs. Diez, IV L. J. 479.)

C. NATURE AND SCOPE OF THE POWERS OF THE ELECTORAL COMMISSION.

With the creation of the Electoral Commission having a *judicial function*, there is a doubt whether such body should submit itself to the processes and special remedies as an ordinary court of justice. Section 516 of the Code of Civil Procedure provides that the "Supreme Court shall have concurrent jurisdiction with the

Court of First Instance over inferior tribunals . . boards or persons, whether exercising functions judicial or ministerial, which are without or in excess of such tribunal . . board . . or persons." (See also Sec. 226 of the Code of Civil Procedure). The Electoral Commission laid down the supplementary rule that as long as it can make applicable and not incompatible with the other Rules adopted on December 18, 1935, it shall follow the provisions of the Code of Civil Procedure and the decisions of the Supreme Court and of the procedure in the ordinary courts of justice. And, according to the case of Navarro vs. Diez, IV L. J. 479 (1936), the Electoral Commission within its special jurisdiction has, in general, the powers which a tribunal of justice ordinarily would have if it would exercise the jurisdiction conferred on the Electoral Commission. Being then a tribunal of justice may it not be said that it is subject to the writ of prohibition or any other extraordinary remedies? The Solicitor General, in the case of Angora vs. The Electoral Commission (Angora vs. Electoral Commission, supra) expressed the opinion that the Supreme Court has no jurisdiction to control by prohibition the exercise of the Electoral Commission of its powers granted by the Constitution on the ground that the Electoral Commission is not an *inferior* tribunal against which prohibition will lie.

Another opinion advanced is that the Senate and the House of Representatives under the Jones Law were the sole judges of the elections, returns and qualifications of their elective members and according to the courts, where the sovereign has placed it, the judiciary must permit. (Veloso vs. Provincial Board of Canvassers of Leyte, 39 Phil. 886). The Supreme Court of the Philippine Islands lacks jurisdiction by mandamus or injunction to restrain or control the action of the Philippine Legislature or a branch thereof. (Alejandrino vs. Quezon, 46 Phil. 83). The Courts will not entertain direct proceedings to admit, exclude, or reinstate, any member of the state legislature, contrary to the decision of that body after it has legally organized. (In Re Gumm, 50 Kansas 155; Hiss vs. Bartlett 3 Gray 468; French vs. Senate, 146 Col. 604). Nor will they declare a vacancy in the membership thereof. (Carrington vs. Buffell 90 Md. 569). Doctrines laid down by the courts are applied by analogy, because the Electoral Commission exercises an essentially judicial function hence, it is claimed that it is still a part of the National Assembly.

The question hinges on two points: Whether the Electoral Commission is a tribunal of justice and if it is whether it comes within the meaning of section 516 and Section 226 of the Code of Civil Procedure as an inferior body. That it is a tribunal of justice is easily conceded. From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the Legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. (Angora vs. Electoral Commission, supra). If it is a tribunal, is it inferior to the Supreme Court and the Court of First Instance such that it may be subject to their orders?

According to the rules and resolutions promulgated by the Electoral Commission, its procedure shall be governed by the provisions of the Code of Civil Procedure not incompatible with the rules laid down.

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

From the reading of this opinion of Justice Laurel it can be gathered that it is certain that the Electoral Commission is not considered as a body similar in category as one of the standing committees of the National Assembly. To place it in that category would be contrary to the purpose of its very creation. It is close to the legislative department and the majority of its members are from the National Assembly, it is true, but at the same time, it is a body distinct from the legislature. This classification is followed by Justice Laurel, to be in consonance with the maxim that "natura abhunt vacuum". It is safe to avoid the void in its classification, to place the Electoral Commission as an appendage yet not subordinate to the National Assembly, in so far as its existence is considered, for the reason that when the framers of the Constitutional Convention deemed it wise to allow the creation of the Electoral Commission, it gave up that prerogative heretofore enjoyed by the legislative body to that creation called the Electoral Commission. Once the sovereign power has divested itself of its authority to another, it cannot afterwards claim that back, otherwise the provision of the Constitution will be reduced to nil.

May it then be an inferior tribunal in relation to the Court of First Instance or the Supreme Court? It cannot be classified as an inferior tribunal in relation to the Supreme Court because it is partly composed of members who are also justices of the Supreme Court. By express provision of the Supreme Court, the three justices to be designated by the Chief Justice are empowered to sit in the Electoral Commission of the National Assembly. Though the Electoral Commission as it has already been asserted, is an appendage of the National Assembly, it does not necessarily make it an inferior tribunal. To do so, would be derogatory to the function and position held by the Justices of the Supreme Court and members of the Legislature who sit in that body to deliberate on election contests. The Electoral Commission then cannot be an inferior tribunal to the Court of First Instance, much less to the Supreme Court

and therefore it is not subject to the writs of prohibition.

The next question comes up as to whether the Electoral Commission has the power to promulgate rules and regulations of its procedure.

In the case of Angora vs. Electoral Commission it was claimed by the respondents therein that while it is an instrumentality of the Legislative Department of the government, the National Assembly has no power to prescribe rules over and above that of the Electoral Commission, on the ground that it is unwarranted by the exercise of the power lodged exclusively in the Electoral Commission. (Angora vs. Electoral Commission, G. R. No. 45081, p. 11-12, Memorandum for the Respondents).

Whereas, the plaintiff claims that it was not the intention of the framers of the Constitution to deprive of the National Assembly of that power to regulate in view of the constitutional history of the privilege and of the fundamental division of the powers in all governments of republican form.

We have already seen that the framers of our Constitution purposely transferred the power to settle election contests heretofore exercised by the Legislature to an independent and separate tribunal. We also know that the power to settle election disputes, is inseparably linked with the authority to prescribe rules and regulations for the exercise of that power. The constitution having taken away that power to judge election contests from the National Assembly, the authority to prescribe rules for its procedure is also taken away. There was no law nor constitutional provision which authorized the National Assembly to fix and regulate the procedure of the Electoral Commission, and what the National Assembly could not do directly it could not do indirectly.

Having then the power to regulate its proceedings will the confirmation by the National Assembly of the election of candidate-elect deprive those who wish to contest the election of those confirmed? This question was answered in the case of Angora vs. Electoral Commission (supra). If the resolution confirming non-protested election of members of the National Assembly had the effect of limiting or tolling the time for the presentation of protests, the result would be that the National Assembly—on the hypothesis that it still returned the incidental power of regulation in such cases—had already barred the presentation of protests before the Electoral Commission, of matters entrusted to its exclusive jurisdiction by the Constitution.

CONCLUSION

A. THE DOCTRINE OF SEPARATION OF POWERS

1. *The Theoretical Point of View*

The doctrine of separation of powers according to Montesquieu divides the government machinery into three branches, namely: the executive, the legislative, the judicial: each functioning independently of the other and forbidding any encroachment by one department on another in the exercise of the authority so delegated (12 C. J. 802-804). According to this doctrine these branches of the government are such separate bodies with no possible penumbra between them.

2. *The Practical Point of View*

While it is true that the principle of the separation of powers has generally been accepted as binding in our governmental system, the practical necessity of an efficient government has prevented its complete application to all the ramifications of our government. The business of the government does not admit any exact division into categories (Laski, Authority in the Modern State [1919], 70, 71). Mr. Justice Cardozo in a leading case decided by the New York Court of Appeals in 1928 said that, "the exigencies of government had made it necessary to relax a merely doctrinaire adherence to a principle so flexible and practical, so largely a matter of sensible approximation, as that as the separation of powers". (cited in the article—Separation of Powers in the Philippines by Vicente G. Sinco, The Philippine Forum, December, 1935, Vol. I, No. 1, p. 15).

B. THE ELECTORAL COMMISSION IN THE LIGHT OF THE DOCTRINE OF THE SEPARATION OF POWERS

An examination of our Constitution will show that there is established in our governmental system the doctrine of separation of powers in an even stricter form than that obtaining in the Federal Government of the United States. The modified doctrine as embodied in our former organic laws, particularly that provided in the Jones Law was considered "a great improvement" over the form of government of the United States. We may thus logically infer that the orthodox doctrine now found in our Constitution indicates an anachronism in the political structure of the Philippines (The Separation of Powers in the Philippines by Vicente G. Sinco, supra).

But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent (Angora vs. Electoral Commission, supra). The creation of the Electoral Commission is an adequate example. One of the principal reasons for the opposition to its creation was the adherence to the doctrine of separation of powers. According to Delegate Alejo Labrador, it is a necessary corrollary to the doctrine of separation of powers and in consonance with sound parliamentary practice that no legislative body would really become independent of the other branches of the government unless it had the power to determine the eligibility and election of the members composing it. To authorize one branch of the government to decide who should form part of the other would make the latter entirely subordinate or subservient to the former branch. (1 Aruego, The Framing of the Philippine Constitution, 264). I shall start on the predicate that the Electoral Commission is a separate body from the National Assembly having a judicial function specially enhanced by the presence of the judicial element in its composition. The idea conveyed in the deliberations of the Constitution is well carried in the statements given in the case of Navarro vs. Diez (IV L. J. 479) by Mr. Gregorio Perfecto also a member of that Convention when he said, after tracing the history of this body, that the Electoral Commission is an independent organism with

supreme and conclusive power within its particular jurisdiction. It is not a committee of the National Assembly nor a division of the Supreme Court not being a superior nor inferior to the first nor the second. It is not under the supervision of the executive power. If it does not belong to any of the three divisions of our governmental system, where do we place the Electoral Commission? We have here a body, enjoying the powers which traditionally belonged to the Legislature, having for its members who represent the major and minor parties in the National Assembly and who represent the highest tribunal of justice in the land, performing a judicial function and occupying a position neither inferior nor superior to any of the three branches of the government nor considered a part of any of them, and even above all these the doctrine of separation of powers operating as a fundamental principle in our system of our government.

May it not be classified as a fourth division in our governmental system having powers peculiarly its own? But according to Mr. Justice Laurel, the Electoral Commission is not a power in tripartite system of government. If it is not a power in the tripartite system of government it must be lodged somewhere in any of the three divisions. By virtue of its composition and its function and by the fact that it enjoys the privileges and powers that were once characteristically legislative, it can be considered as closer to the National Assembly and the Judiciary, than to any of the other branches of government. And yet, although it is closer to the National Assembly (Navarro vs. Diez, supra) and to the Judiciary it is not a part of any of the two. This fact is certain: that although it is asserted that it is not a part of the Legislature or the Judiciary, it is a body that bear important characteristics of one and the other. Then, it must be considered as a body similar to a satellite that had grown out of the orbits of two satellites. Thus, we have a nebula whose very existence was clearly defined by the Supreme Law of the land, enjoying in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members (Angora vs. Electoral Commission, supra) constituted by members of the Legislature tempered by the presence of judicial element, by the designation of the three justices of the Supreme Court to sit in that body, presided over by the Senior Justice and finally exercising a judicial function.

This conclusion is irresistible when we take into consideration unlike in the countries of the prototypes of the Electoral Commission that our Constitution has blocked out with deft strokes and in bold lines, the allotment of powers of the three departments in our government each having exclusive cognizance of matters within its jurisdiction and supreme within its own sphere. (Angora vs. Electoral Commission, supra).