

BENEDICTO AUSTRIA, PETITIONER, VS. JOSE L. AMANTE, RESPONDENT.

G.R. No. L-959. January 09, 1948

Ponente: BENGZON, J.

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BENGZON, J.:

Benedicto Austria instituted this quo warranto proceeding to wrest from respondent Jose L. Amante the position of mayor of the municipality of San Pedro, Province of Laguna. He alleged he was peacefully discharging the duties of that office when on the third day of September, 1946, respondent Jose L. Amante unlawfully and forcibly took possession thereof with the assistance of some members of the military police.

Undisputed facts are these:

1. In the general elections of December 10, 1940, petitioner Benedicto Austria was elected municipal mayor of San Pedro, Laguna, and in the next month he qualified as such.
2. On November 25, 1941, he was suspended from office by reason of an administrative complaint filed against him.
3. Due to the outbreak of the Pacific War he could not resume his office after the 30-day period provided by law. No elections for mayor were held in December, 1943.
4. Upon the arrival of the United States Army of Liberation, the PCAU appointed Antonio Partoza, acting mayor of said municipality.
5. On October 15, 1946, Partoza resigned. Whereupon Acting Governor Jesus Bautista of Laguna designated petitioner as acting municipal mayor, even as he informed the Secretary of the Interior of the "recall" of herein petitioner, recommending that "proper appointment be extended to him effective October 16, 1945." On this recommendation no action was ever taken by the Department, because the Rural Progress Administration and several residents of the municipality opposed it and because it was known that at the beginning of the War he was under suspension for reportedly subversive activities.
6. On February 6, 1946, Benedicto Austria was appointed acting mayor by the President of the Philippines. (Exhibit 2.)
7. On August 2, 1946, respondent Jose L. Amante was appointed mayor of the municipality, by the President of the Philippines. (Exhibit 1.)
8. On September 4, 1946, respondent Jose L. Amante assumed office as mayor.

There is some controversy as to the circumstances under which Amante took the post.

According to petitioner's evidence, in the morning of September 3, 1946, Amante showed to him his (Amante's) appointment but he declined to quit because he had received no orders from his superior, meaning the Provincial

Governor; that Amante went away; that thereafter, the same morning, one Lieutenant Galvez of the Military Police took him from San Pedro to Sta. Cruz, the capital, where he was "detained" for three days; that upon his return Amante was already exercising the powers of the town mayor.

The respondent explained that on September 1, he had a talk with petitioner, showing the latter his appointment Exhibit 1; that petitioner said he could not vacate without orders from the Governor; that he conferred with Lieutenant Galvez in Calamba who, having in turn talked with the Governor by telephone, advised Amante to go to Sta. Cruz and see the Governor; that he went to Sta. Cruz and received from the Governor a letter addressed to herein petitioner, informing him of Amante's appointment and directing delivery of the office to him; that apparently petitioner avoided service or receipt of the Governor's letter; that consequently Amante journeyed on September 3 to complain to Lieutenant Galvez again; that the latter detailed one of his sergeants to deliver the Governor's letter to Austria, which was done that same afternoon; that the next day (September 4) at 8 a. m., Amante proceeded to the municipal building where he found petitioner willing and disposed to vacate; that he assumed office at about 8:30 with the knowledge and consent of said petitioner, who retired to his home thereafter. There is evidence that shortly before twelve Lieutenant Galvez arrived, and, pursuant to orders from Sta. Cruz headquarters took Austria with him to Sta. Cruz. The testimony on these points specially the peaceful transfer of functions is corroborated by the municipal treasurer, apparently a disinterested witness. Anyway, it appears that having complained to the provincial fiscal of the alleged undue intervention of the police officers, Austria inexplicably failed to substantiate them, when required to do so. And this Court is hardly the forum to try such disputed questions of fact.

It is important to observe in this connection that petitioner's theory was that he was "arrested" on September 3, so that respondent assumed office on September 4, after he was arrested. But according to Exhibit F-4, signed by petitioner himself, he was taken by Lieutenant Galvez only on September 4 under protective custody, by reason of his connection with certain communistic organizations about to disrupt peace and order in the locality.

There are reasons to believe that the coincidence of petitioner's removal to Sta. Cruz as a precautionary measure is being colored to meet any contention founded on his having yielded the mayoralty of his own volition. But voluntary surrender of the office should be immaterial, specially where action to test the right of the new occupant is instituted without delay.

The pivotal issue is whether petitioner is lawfully entitled to continue discharging the duties and powers of the town executive. Well-known is the principle, in litigations of this nature, that the plaintiff will succeed only when he proves his right to the office.[1]

Undoubtedly, the petitioner can lay no claim to the post in virtue of the 1940 elections. The term of the office to which he was elected, had, under the law, expired in 1943; and we found in *Topacio Nueno vs. Angeles* (76 Phil., 12), that the Legislature did not intend that elective municipal officials shall hold over after the expiration of their terms.

Neither can he assert title under the "designation" given to him by Acting Governor Jesus Bautista, because obviously the said official did not pretend to make an appointment, inasmuch as he recommended to the Secretary of the Interior that an appointment in favor of herein petitioner be issued, which appointment has never been issued. Anyway, granted the designation was a real appointment independently of any subsequent action by the Department of the Interior, it was not legal, because the provincial board did not consent to it, the approval of said body being necessary under section 16 (a) of Commonwealth Act No. 357, the provision of law which in *Nueno vs. Angeles* we held to be applicable to identical situations.

Lastly, the appointment of petitioner by the President of the Philippines was merely as Acting Mayor. It is

elementary in the law of public officers and in administrative practice that such appointment is merely temporary, good until another permanent appointment is issued, either in favor of the incumbent acting mayor or in favor of another. In the last contingency, as in this case, where the permanent appointment fell to the lot of respondent Jose L. Amante the acting mayor must surrender the office to the lucky appointee.

There is no need of a notice to the "acting" appointee or any form of hearing. Such procedural requirements apply where the officer is removable only for cause. This is not the case. In changing an acting appointee, the appointing power has full discretion, and is not limited to removals "for cause."

It becomes unnecessary at this time to decide whether the appointments made by the President may be upheld in view of his emergency powers, because both parties do not raise the question, even assume its existence. Neither can petitioner assail the respondent's appointment by a Presidential agent, because his appointment (petitioner's) by the Secretary to the President Exhibit 2, being in the same category, would also be invalid, and then he has to fall back on his "designation" by the acting governor of the province, which as hereinbefore indicated fails to support his claim. (Cf. *Topacio Nueno vs. Angeles*, supra.)

Net result of the foregoing discussion is that claimant has no solid ground upon which he may be ordered reinstated. Wherefore, his petition is denied.

Moran, C.J., Paras, Feria, Hilado, and Padilla, JJ., concur.

[1] *Acosta vs. Flor*, 5 Phil., 18; *Topacio Nueño vs. Angeles*, infra; *Lomuntad vs. Cuenco*, 41 Off. Gaz., 894; *Moran*, Rules of Court, 2d Ed., Vol. II, p. 169.

DISSENTING OPINION

PERFECTO, J.:

The vital question in this case is whether the Supreme Court should allow force, violence and illegality to supplant the orderly processes under a democracy and a government of laws. All the other questions in this case are over-shadowed by that vital question. We will not waste time on them.

It is a fact that on September 3 or 4, 1946, because petitioner Austria refused to relinquish the position of mayor of San Pedro, Laguna, he was arrested by an officer and several soldiers of the MP and brought to Calamba and later to a jail at Santa Cruz, Laguna, where he remained imprisoned for three consecutive days. He was arrested without any warrant of arrest. Although he was hungry, he was not even allowed to take his breakfast. The arrest was evidently not only illegal but criminal, punishable under the provisions of the Revised Penal Code.

There is no question that at the time Austria was occupying legally the position of mayor of San Pedro. Whether or not he was entitled to continue holding the position, or relinquish it in favor of respondent Amante is beside the question.

We may admit that Austria was wrong in retaining the position and in refusing to relinquish it in favor of Amante. But he could not be ousted by force or violence or any illegal or criminal means. He was entitled to the protection of the law. If he was not entitled to continue in office and it was his duty to deliver it to Amante, the latter could have sought relief from the proper court of justice. Perhaps Austria could have been subjected to administrative investigation and action. Perhaps he could even have been criminally prosecuted. At any rate, the law provides the legal means to oust him from the position and to deliver the latter to Amante. The law does not authorize the use

of violence, force, or illegality. The fact that Austria had committed a wrong is no reason why Amante or the officer and soldiers who helped him in occupying the position can resort to wrong measures, violent means, illegal force or any criminal action to attain their ends. By the arrest and imprisonment of Austria, it is clear that a violation had been committed not only of provisions of the Revised Penal Code but also of the fundamental guarantee provided by the Constitution for the protection of the liberty of all persons living under our flag. No one can be deprived of that freedom without due process of law. No one can be arrested without following the procedure authorized by law.

The facts proved, according to the evidence on record, show conclusively that Amante snatched the position of mayor from Austria, by a procedure highly subversive. The arrest of Austria was undoubtedly seditious, and no law-abiding citizen can approve it. Ours is still a government of laws. Civilized society has replaced the jungle millennial age.

Petitioner testified that on September 3, 1946, respondent went to his house alleging that he was the mayor. Petitioner refused to be replaced by respondent. "I went home because I was already hungry and I was thinking as to what I should do, when I was already in my house the military police arrived and arrested me. After my arrest I requested the military police to allow me to eat because I was very hungry. I was not able to eat because the military police told me that it could not be done and they took me to a jeep. When they saw my revolver they took it away from me. They then brought me to Calamba and on the same day they took me to Santa Cruz. I was taken to Santa Cruz on Wednesday and released me on Friday, on the afternoon." Petitioner was not able to resume the position as mayor after his release, because the position was already occupied by respondent. There were five individual members of the military police who arrested him. No warrant of arrest was shown to him. One of the officers was Lieutenant Carlos Galvez. "They were pointing their guns when they entered my house." The chief of police of San Pedro was with them. The soldiers "held me, with their guns pointed towards me. I could not ask why they were arresting me because I was caught by surprise. After they held me to be taken to the jeep I asked them to allow me to eat but they said they will not allow me. When we were already in the street Lieutenant Galvez took my gun. They put me in the jeep and took me away. They told me they were putting me under protective custody." At Santa Cruz petitioner was held in the headquarters of the military police under Major Raymundo. "On the third day Major Raymundo told me that I could be released. He told me to execute an affidavit stating that I was not tortured by them and they did not put me in jail and that I was there under their care. He told me that my detention was intended to take me under his care because I was not a criminal I have not committed any offense. I filed a complaint with the provincial fiscal to find out whether I have a right to complain against that detention." Exhibit F is the written complaint he filed with the provincial fiscal. "Until now I have not received any word of action taken." The reason of petitioner's arrest was "in order that I may be replaced by Jose L. Amante." When Lieutenant Galvez arrived with his soldiers, "he told me I was under protective custody. 'You have to go with us.'"

Candido Rivera, chief of police of San Pedro from November 16, 1945, to September 16, 1946, testified that on September 3, 1946, "Mayor Austria told Mr. Amante that he could not leave his office until he receive order from his superior to leave the position. After that conversation Mr. Amante went out and according to Mayor Austria he has not yet taken his breakfast and also he went out and went home. Afterwards Lieutenant Galvez arrived with some soldiers and he asked me in what place he could find Mayor Austria. I told him that he went home to eat his breakfast. He asked me 'Can you not accompany us to his house as we don't know his house?' I accompanied them. When we reached his house we saw Mayor Austria near a table. I pointed to Lieutenant Galvez Mayor Austria. Lieutenant Galvez then told Mayor Austria that he should go with him as Mayor Austria was under protective custody. As it was already about 12 o'clock Mayor Austria requested Lieutenant Galvez to allow him to eat before being taken. Lieutenant Galvez refused and told him that Mayor Austria should be taken by him to

Santa Cruz. And when they were about to ride in the jeep outside, Lieutenant Galvez saw the gun of Mayor Austria which gun Lieutenant Galvez took away. Then they left for Santa Cruz. I went to the municipal building." There the witness saw Amante who asked him whether Lieutenant Galvez saw Austria and he answered yes and they left for Santa Cruz. The witness continued in his position in the hope of seeing Mayor Austria that afternoon but he did not come. "Since the departure of Mayor Austria, Mr. Amante took up the position of mayor and he was the one ordering us. Mr. Amante told me that 'from now on I am the mayor of San Pedro and I want you to know that, and on the hour of shifting of the policeman they should be there, I want to see them."

Carlos F. Galvez, first lieutenant, MP, assigned as commanding officer of the 21st MP, with station at Calamba, Laguna, testified that on September 1, 1946, Amante "came to my office to request for an advise covering the refusal of ex-Mayor Austria to vacate his position after showing to me a letter of appointment signed by a Mr. Abello. He told me that inasmuch as it is an administrative case the only thing he could do is to request from the superior officer of the provost marshal, Major Raymundo." On September 3, 1946, Amante "came to my house again." Amante brought a letter from Governor Pambuan addressed to Austria. "I told my first sergeant to deliver the letter to Mayor Austria on behalf of Mr. Amante. I gave the letter to the first sergeant Jose D. Garcia." On September 4, 1946, "around 9:30 or 10 o'clock of September 4, 1946, I received a telephone communication from the provost Marshall office to get ex-Mayor Austria and to bring him to Santa Cruz headquarters. So I proceeded immediately to San Pedro. I saw Mr. Amante talking with the chief of police. I greeted Mr. Amante and inquired from him what happened if he has already seated and Mr. Austria has vacated. After the mayor has informed me that ex-Mayor Austria has given him the position I advised the chief of police to extend cooperation for the success of the administration as it was my duty. We proceeded to the house of Mr. Austria. When we reached the house I knocked at the door and inquired if I am in the residence of Mr. Austria. I saw a stout man and he told me that Mr. Austria is in. So I told him I wanted to talk to Mr. Austria. After a lapse of time Mr. Austria came out and I told him that I have instruction from the headquarters to bring him to Santa Cruz and requesting him that his firearm be taken to our custody temporarily. He came with me to the headquarters at Calamba and in the afternoon I had him delivered to Santa Cruz.

Jose L. Amante respondent, testified that in the morning of September 1, Sunday, at about six o'clock he went to the municipal building and after showing his appointment, he requested the police sergeant to inform Mayor Austria of his desire to take his oath of office and begin his duty as municipal mayor on that day. "The sergeant told me that he will do that for me and I proceeded to the church to attend the mass. After coming from the church I took my breakfast and then proceeded to the municipal building and found Mr. Austria sitting on a bench in front of the building. I approached him and asked him if the sergeant has transmitted to him the information that I gave that morning. All of a sudden he told me that he cannot leave the position. He told me that he would not leave the position because only the governor's command to vacate the position would convince him to leave the post. What I did was to go to Lieutenant Galvez of the MP at Calamba and ask his advice as to what I should do. The next day, September 2, Monday, I went to Santa Cruz early in the morning. The governor "gave me a letter directed to Mr. Austria informing him of my appointment as mayor and instructing him to turn over the position of Mayor to me. I returned to San Pedro. On September 4, the witness went to the municipal building. The municipal secretary "informed me that the mayor was calling for me in his office. I went to the office of the mayor and Mr. Austria told me that he would then turn the office to me, inasmuch as he has already received instructions that he was waiting for. He congratulated me and wished me success. After that I took my oath of office and I begun my duties as mayor of San Pedro. Probably at 8:30."

Austria, testifying in rebuttal, said that what respondent testified as to their conversation on September 4, 1946, during which petitioner advised respondent that he recognized his right to the position that he was relinquishing and delivering it to him and afterwards congratulating him and wished him success, cannot be true because "on

that very date I was already in jail in Santa Cruz, Laguna."

The written complaint Exhibit F filed by petitioner with the provincial fiscal having been endorsed by the latter to the provincial provost marshal for his comment, the provincial provost marshal Major Elpidio L. Raymundo made on September 16, 1946, the following endorsement:

REPUBLIC OF THE PHILIPPINES
HEADQUARTERS
LAGUNA PROVINCE MILITARY POLICE COMMAND (PA)
SANTA CRUZ, LAGUNA

2nd Indorsement
16 Sept., 1946

"Respectfully returned to the Provincial Fiscal, Laguna, with the following comment:

"BENEDICTO AUSTRIA was supposed to surrender his office as a mayor of San Pedro, Laguna on the 3 September 1946, to the new appointee, but as he refused to vacate his office, the new Mayor asked the assistance of the 21st MP Co (PA) under Lt. Carlos Galvez. It was only the intervention of Lieutenant Galvez that succeeded in unseating Mayor Austria on the 4th instant. So it is clear that the delay is caused by the refusal of said Mayor Austria to yield his office to the new appointee. This single instance alone could have caused his arrest and prosecution.

"On top of this, is the military necessity of taking into protective custody the top members of the HUKS and its allied communistic organization for a general insurrection and rebellion was proclaimed by the HUK Supremo LUIS TARUC. Ex-Mayor Austria being identified as one of the leaders of the "YAPAK" and "ORAS NA" both communistic organizations of San Pedro was brought to this Headquarters. Seeing the need of putting him under our protective custody so that he'll not fall into the hands of the enemy, I explained to him the wisdom of staying with the MPs in these hectic days. He did not only assent to it but was also grateful. So that with his consent, he stayed with us, not as a prisoner but as a guest for he was given all the accommodations, comforts and the facilities accorded to inspecting officers of this Command.

"When on the 6th instant, he requested to be released from our custody, I readily assented. He willingly signed an affidavit that he has no complaint to make against the MPs, copy attached. I see the malice in a complaint coming from a guest against his host after making him believe that his stay was enjoyable and pleasant.

(Sgd.) "ELPIDIO L. RAYMUNDO
"Major, Infantry
"Provincial Provost Marshal"

The statements made in the above endorsement supports fully the testimony given by Austria as to his arrest because of his refusal to vacate the office of the Mayor and belies the testimony of Amante to the effect that Austria delivered voluntarily the position to him.

The affidavit obtained by the provost marshal from petitioner Austria at the time of his release is copied in Exhibit F-4 as follows.

"AFFIDAVIT

"I, BENEDICTO AUSTRIA, married, of legal age, residing in San Pedro, Laguna having been duly sworn to according to law do depose and say:

"That I was under the protective custody of the Laguna Province MPC since 4 Sept. 46 to 6 Sept. 46.

"That on 6 Sept. 46 I am being released from their protective custody.

"That while in protective custody, I was not maltreated, manhandled or abused.

"That I have no complaint to make against the MPs. In fact I feel grateful of the kind attitude and treatment bestowed on me while with them.

(Sgd.) "BENEDICTO AUSTRIA

"Ex-Mayor, San Pedro, Laguna

"Subscribed and sworn to before me this 6th day of Sept. 1946.

(Sgd.) "ELPIDIO L. RAYMUNDO

"Major, Infantry

"Provincial Provost Marshal"

This also tallies with the testimony of Austria. It is significant that respondent failed to call as a witness the municipal secretary who, according to him, called him from the office of the municipal treasurer and brought him before petitioner Austria in order that the latter may deliver voluntarily the position of mayor. No one corroborated the testimony of Amante as to the voluntary delivery of the position. Besides, the endorsement of Major Raymundo belies completely the testimony of Amante. It appears therein that Austria has refused to vacate the position. There it is stated: "It was only the intervention of Lieutenant Galvez that succeeded in unseating Mayor Austria on the 4th instant." Major Raymundo added: "So it is clear that the delay is caused by the refusal of said Mayor Austria to yield his office to the new appointee. This single instance alone could have caused his arrest and prosecution."

If the testimony of Amante to the effect that on September 4, 1946, Austria delivered voluntarily to him the position of mayor is true, what was the purpose of the intervention of Lieutenant Galvez for "unseating Mayor Austria on the 4th instant," as stated in the endorsement of Major Raymundo?

Upon the evidence on record, it is conclusively proved that Mayor Austria, the petitioner, refused to deliver his position and Amante, the respondent, had to go twice to the Calamba headquarters of the MP and once to Santa Cruz to see the provincial governor, to seek help in order that he may occupy the position. All efforts to induce petitioner Austria to relinquish the position having failed. Lieutenant Galvez and several soldiers of the MP arrested Austria, under the euphemistic and deceitful terms "protective custody," brought him first to Calamba and then to the headquarter's jail at Santa Cruz, Laguna, where he remained imprisoned for three successive days. Amante's assertion that Austria delivered to him voluntarily the position on September 4 is a stark falsehood belied by oral and documentary evidence on record.

There are pronouncements in the majority opinion which we cannot by-pass in fairness to the parties concerned.

It is asserted that Austria, when required to do so, failed to substantiate the complaint he filed with the provincial fiscal against the officer and soldiers who arrested him. There is nothing on record to show the alleged failure. On the contrary, there is the positive testimony of Austria to the effect that the provincial fiscal failed to take action. He declared: "Until now I have not received any word or action taken." And this testimony has not been contradicted by any one. It is true that there is on record Exhibit F-1 through which the provincial fiscal transmitted to petitioner Raymundo's endorsement Exhibit F-2, which is a response to a previous endorsement of

the provincial fiscal Exhibit F-3, just requesting the provost marshal to comment on the complaint filed by petitioner. But nothing more has been done by the provincial fiscal. Besides, there is nothing on record to explain why the complaint filed by petitioner was simply endorsed to the provost marshal for comment, instead of being the subject of a speedy investigation, with citation of witnesses, a procedure which the provincial fiscal was in duty bound to follow.

The majority is capitalizing the contradiction between petitioner's testimony that he was arrested on September 3, and Exhibit F-4, wherein petitioner states that he was arrested on September 4. We do not have any doubt that the last date is the correct one, according to the evidence on record, and that the first date was given by petitioner due to an honest mistake. The pronouncement of the majority to the effect that "according to Exhibit F-4, signed by petitioner himself, he was taken by Lieutenant Galvez only on September 4 under protective custody, by reason of his connection with certain communistic organization about to disrupt peace and order in the locality," is groundless. The whole text of Exhibit F-4 is quoted above, and there is nothing to support the assertion to the effect that the arrest was "by reason of his connection with certain communistic organization about to disrupt peace and order in the locality." The pronouncement is not supported by any single competent evidence on record.

It is noteworthy that Exhibit F-4 was extracted from petitioner by provost marshal Raymundo as a self-serving evidence to protect all persons responsible for the arrest and imprisonment of Austria. If Raymundo then had in mind the idea that the reason for petitioner's arrest and detention was his alleged connection with "communistic organizations about to disrupt peace and order," he certainly would have required Austria to include the statement in Exhibit F-4. It is remarkable that, according to Exhibit F, Austria had submitted himself to the indignity of signing against his will Exhibit F-4, only to secure his relief from the sufferings of his illegal imprisonment. In Exhibit F we read:

"Bago po ako paalisin o palayain ay pinalagda po ako ni Major Raymundo sa isang kasulatan na ako raw po ay inilagay lamang nila sa 'protective custody;' datapwa't nilagdaan ko po ito sa pagnanais na makalaya na ako at ako'y nahihirapan."

The last pronouncement made in the majority opinion to which we object is the one to the effect that "there are reasons to believe that the coincidence of petitioner's removal to Santa Cruz as a precautionary measure is being colored to meet any contention founded on his having yielded his mayoralty of his own volition." The pronouncement lacks completely any support in the evidence on record. conjecture that is fundamentally unfair to petitioner besides being unreasonable and unfounded.

It is worth mentioning that petitioner, having failed to obtain justice from the Supreme Court for more than a year, had a full vindication on November 11, 1947, when he was elected by the people of San Pedro to the position of mayor with an overwhelming majority.

In said election he received, according to what appears on record, 1,224 votes, against 891 received by respondent Jose L. Amante and 101 received by the third candidate Antonio Cipriales. Even the combined votes of the two defeated candidates are not enough to cope with the majority received by petitioner Austria.

Austria fought for almost one and a half years to obtain justice from the Supreme Court. He was ousted from his position as mayor of San Pedro by force and violence. He was entitled to be returned to his position. He waited vainly for a favorable decision or for any decision. But there is a greater justice than that which tribunals can administer: popular justice, which is final under the processes of a democracy. The sovereign people gave Austria the justice that he failed to get from us by electing him with an overwhelming majority. Petitioner assailed for one and a half years the ouster of the usurper, respondent Amante, who assumed the office through force and violence, with the help of officers and soldiers of the MP who arrested Austria illegally. He failed to oust the usurper. But

the people did what the Supreme Court failed to do. The people inflicted on the usurper a decisive defeat at the polls.

There is nothing in the result of this case for the highest tribunal of the land to be proud of. The decision is to be promulgated when the term of office in dispute has already expired. No matter what the decision is, it will not have any practical effect. For the purposes of the mayoralty in dispute, it will not be anything other than a mere academic gesture.

The petition was filed with this Court on September 23, 1946, nearly a year and a half ago, but within the same month when the coup d'etat took place and by which respondent Amante, with the help of armed MP officers and soldiers, was able to wrest the position by force and violence from petitioner. The hearing on the motion to dismiss took place on November 4, 1946. The second hearing, this time on the merits, took place on January 24, 1947. The case was submitted for final decision on February 4, 1947, after the completion of the evidence presented by both parties.

Eight months later, on November 3, 1947, petitioner's counsel filed a petition, praying for the decision of the case, calling our attention to the fact that petitioner and respondent were candidates for mayor of San Pedro and that if our decision would not be rendered before the elections of November 11, 1947, it would be academic.

On November 17, 1947, the same counsel renewed its petition for decision, not for any practical purpose, but in order to know the judicial verdict on a question upon which popular verdict was rendered with the triumph at the polls of Benedicto Austria who, as the mayor elected in the elections of November 11, 1947, had to assume office only on January 1, 1948.

It appears that, although the litigation between petitioner and respondent has been decided by the sovereign people in favor of petitioner, since November 11, 1947, because no judicial verdict has been rendered in favor of petitioner, the usurper was allowed to continue holding the office in dispute until December 31, 1947. And now that the Supreme Court has decided to promulgate a long overdue decision, the result may appear as a gesture of judicial protest against the decision of the people, and as protecting under the cloak of legality the sixteen-month old usurpation perpetrated by respondent Amante, who was conclusively repudiated by the people on November 11, 1947.

In giving a picture of the situation we do not intend to blame anyone for our delay which, in a great measure, was due to circumstances beyond human control and for which no single individual can be answerable. Our purpose is just to point facts essential for a clear understanding of legal questions raised in this case.

In view of the belated promulgation of the decision and the fact that it would have no effect upon the term of office which has already expired, we would not have taken the trouble of writing this opinion, were it not only for the fact that there is a fundamental ideology in issue in this case, upon which it is not possible for us to enter into any express or tacit compromise.

Our system of democracy is committed irrevocably to a government of laws. That is the spirit, the marrow, the quintessence of the political society structured by our people through the Constitution. Our people cannot countenance reversion to jungle lawlessness. The stage of Philippine culture is essentially incompatible with an unregulated social situation. The existence of law is an essential condition for the existence of a social organic system. Law is the binding force without which all the elements and units of that political society which we call the Republic of the Philippines will be shattered and scattered and as the rubble and dust of a crumbled edifice.

The very essence of the principle of a government of laws has been defied, jeopardized and smashed by the way the mayoralty of San Pedro, Laguna, has changed hands on September 4, 1946. Whether or not respondent was

then entitled to replace petitioner, until such replacement could have been effected by the orderly processes established by law, it was respondent's duty, in fact everybody's duty, to respect petitioner as the legally constituted authority, as the legal mayor of San Pedro. Any illegal move to oust him by force or violence cannot but be seditious. To help him in his seditious and subversive conspiracy to forcibly replace petitioner, respondent sought the help of armed persons who, with clear abuse of their authority and force, without any warrant of arrest and, therefore, in utter violation of the Constitution and of the laws on the matter, arrested petitioner and had him imprisoned for three consecutive days.

Until Austria has voluntarily relinquished the position in dispute or has been legally ousted therefrom by competent authority, he continues to be the mayor of San Pedro for all legal purposes, and none other can exercise his functions without violating the law. In assuming the position and performing the official functions thereof under the circumstances on record, respondent Amante is liable to be prosecuted under the provisions of article 177 of the Revised Penal Code.

"Art. 177. Usurpation of official functions.—Any person who, with or without pretense of official position, shall perform any act pertaining to any person in authority or public officer, without being lawfully entitled to do so, shall suffer the penalty of prision correccional in its minimum and medium periods." (As amended by Republic Act No. 10.)

The MP officer and soldiers who detained Austria, without any warrant of arrest and any legal ground, are liable to be prosecuted for arbitrary detention, under article 124 of the Revised Penal Code which provides:

"Art. 124. Arbitrary detention.—Any public officer or employee who, without legal grounds, detains a person, shall suffer:

"1. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if the detention has not exceeded three days;

"2. The penalty of prision correccional in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;

"3. The penalty of prision mayor, if the detention has continued for more than fifteen days but not more than six months; and

"4. That of reclusion temporal, if the detention shall have exceeded six months.

"The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person."

Perhaps they may even be prosecuted for sedition under article 139 of the Revised Penal Code because, publicly and in group, by means of force, they arrested Austria in order to prevent him from freely exercising his official functions as mayor of San Pedro, and Amante himself may be prosecuted as a party in the conspiracy to commit the seditious attack against Mayor Austria.

"ART. 139. Sedition—How committed.—The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force any of the following objects:

* * * * *

"2. To prevent the National Government, or any provincial or municipal government or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order;"

* * * * *

If not of sedition, they may be accused of an assault against an authority.

"ART. 148. Direct Assaults.—Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present the penalty of prision correccional in its minimum period and a fine not exceeding 500 pesos shall be imposed."

If the decision in this case had been rendered and promulgated opportunely, we would have voted to grant the petition, so that Austria would be restored in office. Now it is too late, and whether we grant or deny the petition it would simply be an empty gesture on the part of the Supreme Court. But we believe it is the duty of this Court, upon the facts proved by the evidence, not to ignore the illegalities and criminal offenses which had been committed in the violent ouster of Austria and the letter's substitution by Amante. Indifference towards illegalities and criminal offenses may be interpreted as a pampering attitude towards their authors. The Supreme Court must not allow the slightest suspicion to lurk in the people's mind that we may condone or justify any illegality. Other officers and agencies of government may indulge in an orgy of lawlessness, but the situation will not be entirely hopeless provided there are tribunals which are dynamic, strong and courageous enough to put the legal brakes. As the last bulwark of legality and constitutionality, the Supreme Court must always be on the alert to promptly uphold the law in its full majesty in all cases submitted to it. Unless we desire to allow the adoption of the Gestapo practices of the German Nazis or the reintroduction of the ruthless ways by which the Nippon Kempei used to mishandle the civil liberties of our people, it is necessary that we proclaim in unmistakable terms that the forcible ouster of Austria was illegal and order the corresponding officers to take immediate steps so that those who may be found guilty of criminal acts in the conspiracy may be punished in due time.

Because our vote is for the taking of the actions suggested in the preceding paragraph, we dissent from the majority decision.

Today, it is absolutely useless to grant or to deny the petition. There is nothing that we can grant or deny petitioner. If we grant the petition, we will be granting nothing, as our action would be aimed at reversing what already belongs to history. If we deny the petition, our action will be just a faint echo, an empty rehearsal, an ultra-sepulchral shadow of what irretrievably belongs to the graveyard of the past. We cannot unmake or remake history. The past is absolutely beyond our jurisdiction. It is beyond all human power. Even divine omnipotence cannot change what has been. Our authority, our power, our jurisdiction can only extend to the unfolding present and to the future. They are necessarily prospective in nature. That is why we cannot vote to grant or to deny the petition. But still we can render our judgment on the legality or illegality of what had happened. And that judgment shall serve the purpose to guide future conduct. We cannot blot out the errors, the sins, and the crimes of the past, but we can help to shape a better future by the adoption of a legal prophylaxis against relapses. Our deploring, condemning, or repenting for the mistakes and offenses committed will be wholly meaningless if they are not accompanied with a sincere planning for a better prospective conduct. We are powerless to take out the wrinkles and angles in the trunk of a full-grown tree, but we can help it to grow healthier branches and to bear better fruits.

There being nothing that can be done to change the itinerary of past events so as to correct mistakes and turn failure into successes, there is more reason why a sterner attitude should be taken against the guilty ones so as to avoid the repetition of past errors and offenses. While there is nothing that can be done to infuse new life into the broken, withered or dried roots of the tree of democracy, we should not fail in our duty to severe and weed out the

rotten limbs so that the healthy ones may continue to grow and branch out and bloom in the glory of a more satisfactory and happier morrow. That is why we cannot but insist on the necessity of calling the guilty to account for their deeds. An express directive from us is indispensable to preclude any parabulia of the prosecuting officers from defeating the purposes of the law. Considering how the phrenic processes are operating in certain sectors of the officialdom, it is imperative that such a directive be issued. The bad example of lawless conduct from high places in the official hierarchy, such as is revealed in the two leading cases of *Vera vs. Avelino* (77 Phil., 192) and *Mabanag vs. Lopez Vito* (78 Phil., 1) had not failed to create a demoralizing complex in many inferior officers, who reason that, by committing illegalities, they are just following the example of those who are above and ought to know better.

BRIONES, M., con quien concurren PABLO, y TUASON, MM., disidente:

La primera cuestion que tenemos que determinar y resolver en este asunto es si alguna vez se puede justificar la violencia, la fuerza, como medio para desalojar a un alcalde o a cualquier otro funcionario de un puesto que legalmente ocupa y desempeña, legitimando luego la posesion violentamente adquirida por el usurpador.

Porque tal es el caso que tenemos ante nosotros. Benedicto Austria, el recurrente, desempeñaba el cargo de alcalde del municipio de San Pedro, provincia de Laguna, fundado su titulo al puesto (a) en haber sido elegido para dicho cargo en las elecciones municipales de 10 de Diciembre, 1940; y (b) en haber sido nombrado para el mismo cargo por el Gobernador Jesus Bautista, de Laguna, el 16 de Octubre, 1946, o sea despues de la liberacion. El recurrente se queja y alega que mientras estaba desempeñando pacificamente la alcaldia de su pueblo, el recurrido Jose L. Amante le desposeyo violentamente de la misma con la ayuda de la policia militar, respaldando la usurpacion con un nombramiento extendido a su favor por el nuevo Presidente de Filipinas Sr. Roxas.

En la decision de la mayoria se dice que Austria no fue desalojado violentamente del cargo, sino que lo dejo voluntariamente. Esta afirmacion no esta sostenida por las pruebas obrantes en autos. La mejor prueba de la violencia empleada contra Austria es el mismo endoso de Elpidio Reymundo, comandante de la policia militar en Laguna, al dar explicaciones al Fiscal Provincial acerca del arresto de Austria y de su detencion en el cuartel de la policia de Santa Cruz, cabecera de la provincia, del 4 al 6 de Septiembre. En ese endoso (Exh. F-2) el Comandante Reymundo afirma sin rebozo que "fue solamente la intervencion del Teniente Galvez la que tuvo exito desalojando del cargo al alcalde Austria el 4 de los corrientes" ("It was only the intervention of Lt. Galvez that succeeded in unseating Mayor Austria on the 4th instant". Cual fue esta intervencion? No pudo haber sido mas que el arresto del alcalde Austria y su forzosa detencion en el cuartel de la policia militar por tres dias consecutivos. Es verdad que se ha tratado de justificar este arresto y detencion con la alegacion especiosa de "protective custody", pero se me ocurre preguntar: No es este el pretexto de la Gestapo y de todos los cuerpos de policia totalitaria? Quien que no sea irremediamente candido, va a creer en este patrana? Mientras se pretendia proteger a Austria contra sus mismos supuestos aliados, los Huks, se le despojaba bonitamente de su cargo colocandose en su lugar al recurrido. Vale la pena reproducir las mismas palabras del Comandante Reymundo, tomadas de su aludido endoso, a saber:

"Benedicto Austria was supposed to surrender his office as a Mayor of San Pedro, Laguna on the 3 September 1946, to the new appointee, but as he refused to vacate his office, the new Mayor asked the assistance of the 21st MP CO (PA) under Lt. Carlos Galvez. It was only the intervention of Lt. Galvez that succeeded in unseating Mayor Austria on the 4th instant. So it is clear that the delay is caused by the refusal of said Mayor Austria to yield his office to the new appointee. This single instant alone could have caused his arrest and prosecution."

Ante prueba tan clara, tan positiva de usupacion y despojo, creo debieramos declarar sin ambages que ninguno en este pais puede tomarse la justicia por su propia mano, mucho menos con la ayuda de una militarada. Las implicaciones de esto son demasiado tremendas para que se pueda dispensar negligentemente, con un simple encogimiento de hombros.

Aun suponiendo que Austria careciera de titulo legal sobre el puesto justificaba esto una media de fuerza contra el, sobre todo respaldada por la policia militar? Indudablemente que no. El que se creyera tenedor de mejor derecho debia acudir a los tribunales para recabar y obtener el remedio apropiado. Estamos bajo un gobierno de leyes, no bajo el imperio de la selva * * *.

La segunda cuestion que tenemos que determinar y resolver es quien de los dos, recurrente y recurrido, tiene mejor derecho sobre el puesto. Estoy conforme con la proposicion establecida en la ponencia de que el recurrente no tiene derecho al puesto en virtud del hecho de su eleccion en 1940 (Topacio Nueno contra Angeles, 76 Phil., 12, citado en la ponencia). En este asunto hemos sentado categoricamente la doctrina de que los funcionarios elegidos en aquel año, cuya tenencia del cargo quedo interrumpida por la guerra, carecian del derecho de continuar automaticamente en el desempeno del puesto bajo la teoria del "hold over" o tacita reconduccion.

Resulta evidente, sin embargo, que el recurrente Austria tiene mejor derecho al puesto en virtud del nombramiento o designacion extendida a su favor por el Gobernador Bautista, de Laguna, a tenor del inciso (a), art. 16, de la Ley del Commonwealth No. 357, el cual dispone que en caso de vacancia temporal, como es el presente caso, la misma se cubre "por nombramiento del Presidente si fuese un cargo provincial y del Gobernador provincial, con el consentimiento de la junta provincial, si fue un cargo municipal." Los unicos casos en que el Presidente puede cubrir un cargo municipal vacante son los especificados en los incisos (d) y (e) del referido articulo 16, Ley del Commonwealth No. 357, a saber: si el funcionario electo falleciere antes de tomar posesion del cargo, o se descualificare por deslealtad, o dejare de habilitarse por cualquier motivo, en cuyo caso el Presidente puede convocar una eleccion especial o cubrir el puesto mediante un nombramiento; o bien cuando la eleccion extraordinaria convocada fracasare. Por tanto, el nombramiento presidencial alegado por el recurrido en su defensa no esta ajustado a la ley y no puede prevalecer sobre el nombramiento extendido a favor del recurrente por el gobernador provincial de Laguna.

Se arguye que este nombramiento no fue confirmado por la junta provincial. Pero quien lo dice? El secretario de la junta, nombrado con posterioridad al nombramiento, el cual dice que no encontro en los "records" referenda del nombramiento. Es indudable que esto no constituye la mejor prueba: desde luego no destruye la fuerte presuncion sobre la legalidad del nombramiento. La circunstancia de que el recurrente estuvo desempenando el cargo por varios meses sin que nadie cuestionase—el auditor, por ejemplo—la legalidad de su nombramiento, demuestra que sobre este particular todo estaba en orden, y que la alegacion sobre falta de consentimiento por la junta es solo un arbitrio de ultima hora.

Por tanto, el recurso debe estimarse.

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