

**JOSE ABAYA, PETITIONER, VS. ALEJANDRINO A. ALVEAR,
RESPONDENT.***G.R. No. L-1793. November 09, 1948*

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4b5a19c14c91/>**MONTEMAYOR, J.:**

There is no dispute as to the following facts: The petitioner JOSE ABAYA now sixty-one years of age and a member of the Bar, was on October 9, 1920 appointed to the post of Justice of the Peace of the towns of Cervantes, Angaki, Concepcion and San Emilio, province of Ilocos Sur and he qualified for the position and discharged the duties thereof. In 1923, the municipalities of Concepcion and San Emilio were excluded from his territorial jurisdiction and he continued to discharge his judicial functions as Justice of the Peace of Cervantes and Angaki up to December 31, 1941, a few days before the Japanese occupation forces arrived in the town of Cervantes. On April 17, 1943 said petitioner was given an appointment as Justice of the Peace of Cervantes only, by Jorge B. Vargas, chairman of the "Philippine Executive Commission". Then on May 1, 1944, Jose P. Laurel as "President of the Republic of the Philippines" extended to him another appointment as Justice of the Peace of the same town of Cervantes, Ilocos Sur. Abaya evidently accepted these appointment is made during the Japanese occupation and continued to discharge his Judicial functions as Justice of the Peace but only for the town of Cervantes, until the month of November, 1944 when, because of the threat of military clashes between Japanese forces on one side and the Filipino guerrillas on the other, he left his post and fled to the mountains for safety.

After liberation and upon the establishment of what the parties term a military government, in Ilocos Sur, Abaya was appointed by the military Governor as Justice of the Peace of the municipalities of Cervantes and Angaki, Ilocos Sur. Then, on August 1, 1945, Mauro Versoza, acting as delegate of the Department of the Interior, designated the petitioner temporary Justice of the Peace of Cervantes and Angaki, the appointment to "terminate as soon as your successor is appointed by the central office". Upon the restoration of peace and order and upon normal functioning of the Commonwealth government, petitioner was, on February 8, 1946, given an ad interim appointment by President Sergio Osmeña to the post of Justice of the Peace for the towns of Cervantes and Angaki. However, when this appointment was submitted to the Commission on Appointments, it was turned down. Abaya was given another appointment as Justice of the Peace by President Manuel Roxas for the same municipalities of Cervantes and Angaki on December 5, 1946 but said appointment was left without being acted upon by the Commission on Appointments.

On June 13, 1947 and presumably because of the failure of the Commission on Appointments to approve the appointment of the petitioner, President Manuel Roxas extended an ad interim appointment to the post of Justice of the Peace of Cervantes and Angaki in favor of the respondent Alejandrino A. Alvear who accepted said appointment and assumed office on July 5, 1947. Alvear's appointment was later confirmed by the Commission on Appointments. In respondent's answer he claims that when he assumed office the petitioner was nowhere to be found because he had gone to the town of Candon, Ilocos Sur to reside. He also states that the petitioner has already asked the Secretary of Justice to have his application for retirement approved.

The petitioner claims that shortly after the respondent had assumed office as Justice of the Peace of Cervantes and Angaki, he, the petitioner wrote a letter to His Excellency, the President of the Philippines protesting against his being deprived of his old post, although, no copy of said letter could be found in the office of the Assistant Executive Secretary of Malacañan. The petitioner further claims that vixen he failed to receive any answer to his letter to the President, he conferred with Honorable Elpidio Quirino, then Vice-President of the Philippines and Senator Prospero Sanidad regarding his being restored to the position for Justice of the Peace of Cervantes and Angaki. Failing to receive immediate relief, he commenced these Quo Warranto proceedings in this Court for the purpose of having him declared the legal and lawful Justice of the Peace for towns already referred to and to have the respondent ousted therefrom. His complaint was received by this Court on November 14, 1947.

The theory of respondent is that petitioner had lost his right, title or valid claim to the position of Justice of the Peace of Cervantes and Angaki by reason of abandonment, consisting in his acceptance of the position of Justice of the Peace of Cervantes only, during the Japanese occupation, said position being different and distinct from the circuit of Cervantes and Angaki held by him before the war; his acceptance of the position of temporary Justice of the Peace of Cervantes and Angaki under an appointment extended by a Special Delegate of the Department of the Interior; his departure from his circuit of Cervantes and Angaki, and his residence in Candon, Ilocos Sur; lastly, his insistence on the approval of his retirement and, his inaction for several months from June 30, 1947 to November 30, 1947, evidencing his intention to abandon his office.

This Court has recently decided a case whose facts are very similar to the present case, 'ie refer to the case of Pablo Teves vs. Perpetuo A. Sindiong [1], promulgated on October 21, 1948. In said case the facts ere related in the statement which we quote:

On December 19, 1914, Pablo Teves was appointed Justice of the Peace of Luzurriaga, Negros Oriental, He qualified for and assumed said office on January 14, 1915. and had since discharged the duties of said office up to the outbreak of the Pacific war in December 1941 Negros Oriental, or part thereof, was subsequently occupied by the Japanese army. The plaintiff followed and stayed with the guerrillas in the free area and continued to discharge his duties as Justice of the Peace of that part of Luzurriaga not occupied by the invaders. However, sometime in October 1943 the plaintiff was arrested by a Japanese patrol and was later taken down to Dumaguete, capital of Negros Oriental, and "there kept a virtual prisoner. Because of plaintiff's absence from the free area of Luzurriaga where a free government had been organized and maintained by the guerrilla forces, the Deputy Governor of said government appointed Atty. Mauro Edrial as Justice of the Peace of said municipality of Luzurriaga. Edrial qualified for the position and performed the duties thereof from July 8, 1944 to January 4, 1945. In October 1944, Pablo Teves managed to escape from his confinement in Dumaguete, went to the free area of Luzurriaga, and asked the Deputy Governor under the guerrilla Government to restore to him his post of Justice of the Peace of Luzurriaga. He was advised that before he could be reinstated he should secure a clearance certificate from the guerrilla military authorities to prove his loyalty to the Filipino cause Plaintiff secured the necessary clearance, and, on January 4, 1945. he was appointed Justice of the Peace of the municipalities of Luzurriaga and Bacong, 6th Administrative District, by Deputy Governor Margarito Teves, which appointment was approved by Alfredo Montelibano, Governor of the Islands of Negros and Siquijor. Plaintiff Teves resumed, or rather qualified for said office and discharged the duties thereof.

On May 1, 1945, Teves was again appointed acting Justice of the Peace of Luzurriaga, Bacong and Dauin, by special agent Jose M. Aldeguer of the Department of the Interior, by virtue of the authority vested in that Department by the President of the Commonwealth of the Philippines, said appointment bearing the approval of the Commanding Officer of PCAU 24. On the same day, the plaintiff qualified for and assumed said office. Then, on December 26, 1945, Teves was again appointed by President of the Philippines Sergio Osmeña, as ad interim Justice of the Peace of Luzurriaga, Negros Oriental. Teves again qualified for and assumed said office. However, when, his appointment was submitted to the Commission on Appointments, it was not confirmed.

Despite this non-confirmation, plaintiff Teves continued in office

In the meantime, and presumably because of this non-confirmation of Teves' appointment, the President of the Philippines nominated the defendant Perpetuo A. Sindiong Justice of the Peace of Luzurriaga and said nomination was confirmed by the Commission on Appointments on September 3, 1946. Sindiong took the corresponding oath on September 14, 1946, and then advised the plaintiff of his appointment and demanded of him the surrender of the office. Plaintiff refused to comply with this demand, insisting that he was the legitimate Justice of the Peace of Luzurriaga. On being apprised of the situation, the Judge of the Court of First Instance of Negros Oriental issued a summary order dated Sept. 23, 1946, directing plaintiff Pablo Teves to make delivery within ten days of the office of Justice of the Peace of Luzurriaga, together with the documents and records pertaining thereto to the defendant Perpetuo A. Sindiong, under penalty of contempt. To avoid unpleasant consequences, Teves surrendered the office and its records to Sindiong on October 7, 1946, and a week later, or on October 14, he commenced the present action in the Court below.

In that case we held that because of the abnormal conditions obtaining in Negros Oriental by reason of the war the formation of new judicial circuits including Luzurriaga — first, the grouping of Luzurriaga and Bacong, and later the merger of the three towns of Luzurriaga, Bacong and Dauin, into a circuit, — was a makeshift arrangement, a mere temporary expedient, far from being permanent in nature, but merely designed to meet and solve the exigencies of the administration of Justice in those areas in the best manner possible under said abnormal conditions; that the law and doctrines governing abandonment of an office may not and should not be strictly applied to cases occurring during the war, specially in those areas occupied partly or entirely by the enemy; and that considering the surrounding circumstances, we ruled that in accepting the post of Justice of the Peace of Luzurriaga and Bacong and later of the office of Justice of the Peace of Luzurriaga, Bacong and Dauin, Teves did not abandon his post of Justice of the Peace of Luzurriaga. We also held in said case that the acceptance by Teves of the ad interim appointment in December, 1945 of his old post of Justice of the Peace of Luzurriaga was not a waiver of his right and title to the old post; that he had the right to hold the same, not under the new ad interim appointment in December, 1945 but by virtue of his original appointment in 1914, for the reason that one cannot be properly appointed to the same post that he is already holding under a valid appointment. In addition, we observed in that case that a subsequent appointment to the post of Justice of the Peace extended to one who already had a right to it because of a previous pre-war appointment under which he had qualified and discharged his duties, may be regarded as a mere restitution or restoration of the position which belonged to him; and that the new appointment can add nothing to or diminish his right to the office conferred by his original appointment.

Applying the doctrine laid down in that case of *Teves vs. Sindiong*[2], including the observations made therein, we find and so hold that because of the abnormal conditions obtaining in Ilocos Sur, particularly the towns of Cervantes and Angaki during the war, there is reason to believe that the changing of the original circuit occupied by petitioner Abaya by eliminating therefrom the town of Angaki, was a mere temporary expedient to meet the exigencies of the administration of justice in that area, under abnormal conditions, and that his acceptance of the new post did not involve or entail abandonment of his old position. In proof of the temporary nature of the change in the circuit is the fact that when conditions returned to normal, the old circuit comprising the towns of Cervantes and Angaki was restored. And it is significant to note that when said old circuit was restored, the petitioner was likewise restored to his old post by appointments extended by two administrations, that of President Osmeña and the administration of President Roxas.

We may add, as we have stated in the case of *Teves vs. Sindiong* that in those days Abaya could not very well dictate his terms of acceptance of the positions extended to him. He had to take them as they came, accepting the position of Justice of the Peace of Cervantes alone during the occupation and accepting a new appointment to the old circuit during the days following the liberation. He had no freedom of choice. The important thing is that he

never intended to abandon his old post and all along during the Japanese occupation and even after liberation he continued in the Judicial service and exercised and discharged the functions of the office of Justice of the Peace in the same place and area which he did before the war. And, we may also say that his appointment by President Osmeña and later by President Roxas, to his old post of Justice of the Peace of Cervantes and Angaki tho not confirmed by the Commission on Appointments, was unnecessary; that it did not and could not add anything to or diminish his right to the office conferred by his original appointment, but that said appointments may be regarded as a mere restitution of the office which belonged to him but which he failed to hold because of, and during the war.

We find no merit in the other grounds advanced by the respondent. When the respondent assumed the office of Justice of the Peace of Cervantes and Angaki, there was no reason nor obligation on the part of the petitioner to continue residing in Cervantes. He was prompted to reside in Candon perhaps because it was his native town. Furthermore, his asking the government to act upon his application for retirement may not be regarded as evidence of intent to abandon his office. We understand that such applications for retirement had, years ago, been filed by many government officials in order to secure the benefits of the retirement law. And his urging the government to act upon such application was perhaps a mere precaution for purposes of security in case that he lost his office against his will. His very letter to the Secretary of Justice in this regard (Exh. 7) states that his successor to the post of Justice of the Peace of Cervantes and Angaki was appointed without his knowledge. And to further demonstrate that he did not intend to lose said office without effort or fight, he filed these proceedings not long after he was deprived thereof.

In view of the foregoing, we hold and decide that the petitioner Jose Abaya never abandoned his office of Justice of the Peace of Cervantes and Angaki, province of Ilocos Sur, and that he is entitled to the same by virtue of his pre-war appointment; and respondent Alejandrino A. Alvear is hereby ordered to deliver said office and all the records appertaining thereto to said petitioner. No pronouncement as to costs. So ordered.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, and Tuazon, JJ., concur.

[1] 81 Phil., 658.

[2] 81 Phil., 658.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.