

RICARDO SUMMERS, PETITIONER, VS. ROMAN OZAETA, SECRETARY OF JUSTICE, AND MANUEL AGREGADO, AUDITOR GENERAL, RESPONDENTS.*G.R. No. L-1534. October 25, 1948*

Ponente: PARAS, J.

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Prior to February 16, 1946, the petitioner was a cadastral judge. On said date he qualified for and assumed the position of judge-at-large of first instance by taking the corresponding oath of office before the Secretary of Justice, the petitioner having received an ad interim appointment on February 11, 1946. On July 9, 1946, petitioner's ad interim appointment was disapproved by the Commission on Appointments, as a result of which the respondent Secretary of Justice duly informed the petitioner that the latter was thereupon separated from the service. The petitioner seemed to have acquiesced in such separation, at least in so far as the same may be inferred from the fact that, thereafter and until the present action was instituted on July 11, 1947, his efforts were limited to the task of being reappointed, although in the letter dated November 22, 1946, written by Senator Vicente Sotto to the Secretary of Justice, and requesting the re-appointment of the petitioner to one of the vacancies in the Courts of First Instance, it was argued that the petitioner did not cease to be a cadastral judge. At any rate, the petitioner does not pretend that he has ever rendered service as cadastral judge or received any of its emoluments subsequent to the rejection of his ad interim appointment by the Commission on Appointments.

It is now argued by the petitioner that, under section 9, Article VIII, of the Constitution, he is entitled to continue as cadastral judge during good behavior until he reaches the age of seventy years or becomes incapacitated to discharge the duties of said office; that the positions of cadastral judge and judge-at-large are not incompatible and that, therefore, by the acceptance of the latter office he did not cease to be a cadastral judge, especially where his ad interim appointment was disapproved by the Commission on Appointments.

There can be no doubt about the constitutional right of members of the Supreme Court and judges of inferior courts to hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. We believe, however, as already pointed out in the concurring opinion of Justices Pablo, Perfecto and Hilado in *Tavora vs. Gavina and Arciaga*,^[1] L-1257, October 30, 1947, 45 Off. Gaz., 1769, 1776, that said right is waivable and should be construed without prejudice to the legal effects of abandonment in proper cases.

It is alleged that the President, on his own initiative and without the knowledge or consent of the petitioner, appointed the latter ad interim to the position of judge-at-large on February 11, 1946. This may be taken for granted. Yet the fact remains that the petitioner was at complete liberty to decide whether he would honor the offer with acceptance or decline the same politely. Indeed, it is not here contended that the petitioner was compelled in any way to qualify for and assume the new position. In *Zandueta vs. De la Costa*,^[1] 38 Off. Gaz., 2358, this Court emphasized that "the petitioner was free to accept or not the ad interim appointment issued by the

President of the Commonwealth in his favor, in accordance with said Commonwealth Act No. 145. Nothing or nobody compelled him to do so. While the office of judge of first instance is of public interest, being one of the means employed by the Government to carry out one of its purposes, which is the administration of justice, considering the organization of the courts of justice in the Philippines and the creation of the positions of judge-at-large or substitutes, the temporary disability of a judge may be immediately remedied without detriment to the smooth running of the judicial machinery. If the petitioner believed, as he now seems to believe, that Commonwealth Act No. 145 is unconstitutional, he should have refused to accept the appointment offered him or, at least, he should have accepted it with reservation, had he believed that his duty of obedience to the laws compelled him to do so, and afterwards resort to the power entrusted with the final determination of the question whether a law is unconstitutional or not."

We do not hesitate to rule that petitioner's voluntary acceptance of the position of judge-at-large consequent upon his taking of the oath of office on February 16, 1946, amounted to a waiver of his right to hold the position of cadastral judge during the term fixed and guaranteed by the Constitution. But it is maintained that an ad interim appointment is merely temporary and the petitioner cannot be said to have vacated the office of cadastral judge in view of the rejection of said appointment by the Commission on Appointments. This point has to be resolved adversely to the petitioner, if we are to be consistent with the decision in *Zandueta vs. De la Costa*, supra, wherein it was held that "when a judge of first instance, presiding over a branch of a Court of First Instance of a judicial district by virtue of a legal and valid appointment, accepts another appointment to preside over the same branch of the same Court of First Instance, in addition to another court of the same category, both of which belong to a new judicial district formed by the addition of another Court of First Instance to the old one, enters into the discharge of the functions of his new office and receives the corresponding salary, he abandons his old office and cannot claim to be entitled to repossess it or question the constitutionality of the law by virtue of which his new appointment has been issued; and, said new appointment having been disapproved by the Commission on Appointments of the National Assembly, neither can he claim to continue occupying the office conferred upon him by said new appointment, having ipso jure ceased in the discharge of the functions thereof."

Moreover, an ad interim appointment is one made in pursuance of paragraph (4), section 10, Article VII, of the Constitution, which provides that "the President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress." It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. An ad interim appointment is disapproved certainly for a reason other than that its provisional period has expired. Said appointment is of course distinguishable from an "acting" appointment which is merely temporary, good until another permanent appointment is issued. (*Austria vs. Amante*, [1] L-959, January 9, 1948, 45 Off. Gaz., 2809.) Thus, the decision in *Santiago vs. Agustin*, 46 Phil. 1, cannot be invoked by the petitioner because Santiago, while being a member of the municipal board of Manila, was designated only "Acting Mayor" and this Court held that he did not thereby vacate his first office. Indeed, the distinction between an acting designation and a permanent appointment may be gathered from the following passage of the decision: "Mr. Santiago took the oath of office and qualified for the position of Acting Mayor of the City of Manila. He indicated to the Municipal Board his intention to fill the new office temporarily and then return to his position as member of the Municipal Board. Mr. Santiago never took the oath of office as Mayor of the City of Manila. He never qualified for the office of Mayor. He never accepted the office of Mayor. He did not at any time disclose an intention to abandon the office of member of the Municipal Board. There was no resignation, express or implied, from the latter office."

In the case at bar, the petitioner accepted and qualified for the position of judge-at-large by taking the oath of

office of judge-at-large, and not merely of an "acting" judge-at-large. He cannot argue that said acceptance was conditioned upon the approval of the appointment by the Commission on Appointments, for, as stated in *Zanduetta vs. De la Costa*, supra, the petitioner "knew, or at least he should know, that his ad interim appointment was subject to the approval of the Commission on Appointments of the National Assembly and that if said commission were to disapprove the same, it would become ineffective and he would cease discharging the office."

In a situation faced by the petitioner, the safer course to follow would have been for him to await the confirmation of the ad interim appointment before qualifying for and assuming the position of judge-at-large. A hasty acceptance on the part of an ad interim appointee, in the anxiety to enjoy either the higher honor or better material advantages of a second office, may lead to seemingly unfair consequences for which the appointing power should not be blamed. While in the ordinary course of things, an appointee certainly has the right to rely on his record and expect the approval of his appointment, it is nevertheless the better part of wisdom for one always to adopt the surer method which will, furthermore, protect him against any design, intentional or otherwise, to oust him from an office the tenure of which is fixed by the Constitution.

The petitioner cannot seek refuge in the general principle that in order that the acceptance of a second office may be held as amounting to a vacation of the first, the two offices must be incompatible. Petitioner's line of reasoning is that the positions of cadastral judge and judge-at-large are not incompatible because the rank, duties, powers and privileges of both do not conflict or are not inconsistent with each other, and one is not inferior or subordinate to the other, but that, on the contrary, said offices have similar rank, duties, powers and privileges in accordance with Commonwealth Act No. 504 which provides that cadastral judges "shall be paid a salary of eight thousand four hundred pesos per annum each, and shall have the same rank, powers and privileges enjoyed by and granted to judges of first instance" (section 1), and Executive Order No. 395, dated December 24, 1941, which provides that "all Judges appointed under the provisions of Commonwealth Act No. 504 (Cadastral) shall henceforth have general jurisdiction throughout the Philippines to try and determine all cases cognizable originally or on appeal by the Courts of First Instance." For our purposes, we would accept the comparison made by the petitioner and admit that there are judicial pronouncements to the effect that incompatibility of offices exists where there is a conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other (42 Am. Jur., section 70, p. 936), or whenever one is subordinate to the other in some of its important and principal duties, and subject in some degree to its revisory power (*Id.*, section 71, p. 937). It is noteworthy however, that the courts are prone to avoid the formulation of a general definition and content themselves with the discussion of specific cases and particular facts, and that it is difficult to find one sufficiently clear and comprehensive to be decisive in every case. (*Id.*, section 70, p. 935.)

Under the comparison presented by the petitioner, the situation before us is undoubtedly not one wherein he may appropriately hold two compatible offices at one time such, for instance, as the positions of town recorder and county and probate judge (*State ex rel. Murphy vs. Townsend*, 79 S. W., 782), but one wherein he cannot legally hold two offices of similar category at the same time, like two positions of judge of first instance. At least, the petitioner does not contend that he can simultaneously occupy the position of cadastral judge and the office of judge-at-large, for this would of course be clearly against public policy. The law has created a fixed number of cadastral judges' (Republic Act No. 156 and Executive Order No. 94, at P8,400 per annum each), and a fixed number of judges-at-large (Republic Act No. 156 and Executive Order No. 94, at P9,000 per annum each), and considerations of public interest must have been the basis therefor. If the petitioner can be a cadastral judge and a judge-at-large at the same time, the judicial positions as specified and created by law will be diminished by one. Authority in support of our proposition is not wanting. In *State vs. Jones*, 150 Wis., 572; 110 N. W., 431, it was held: "That relator in a contest by quo warranto for the office of police justice of the city of Watertown was held

to have no right to that office, because at the time he was holding the office of justice of the peace in the same city. The court said: 'We consider that the two offices are clearly incompatible with, each other, and that one person cannot and should not hold both of them at the same time. In the plainest terms the charter gives the city four judicial officers of the grade of justice of the peace while, if the relator could make good his right to the office of police justice it would, in fact, have but three.' This is a strong and authoritative declaration of public policy and it is said elsewhere that the incompatibility 'which shall operate to vacate the first office exists where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both.' (Mechem, Pub. Off., section 422 and cases.) Preliminary examinations in criminal cases may be held before a justice of the peace, country judge, or court commissioner. Chapter 195, St. 1898. The consolidation in one person of the offices of county judge and justice of the peace diminishes the number of examining magistrates by one." And in *State ex rel. Crawford vs. Anderson*, 155 Iowa, 271, 136 N. W., 128, the same rule was stressed: "It is apparent from these several provisions of the law that the lawmaking power considered it for the public good and convenience to have three judicial officers in every township containing within its geographical limits an incorporated city, or town, and that in criminal prosecutions under the statute, these officers should have the same jurisdiction. And if this be true, can this plain purpose be thwarted by permitting one man to hold two of these offices? We think not, because the two offices are, in our judgment, incompatible when viewed in the light of the public policy expressed in the statutes creating them and defining their powers and duties. To hold otherwise would be to say that, in certain instances, there should be but two magistrates in the township, and it would then follow that other provisions of the statute would become wholly without force and effect."

It becomes unnecessary to determine whether petitioner's acts after he was notified by the Secretary of Justice about his separation from the service, constitute an implied acquiescence therein or an abandonment of the position of cadastral judge.

The petition will be, as the same is hereby, dismissed without costs. So ordered.

Moran, C. J., Pablo Bengzon, Tuason, and Montemayor, JJ, concur.

Mr. Justice Feria has reserved the right to prepare a dissenting opinion.

[1] 79 Phil., 421

[1] 66 Phil., 615

[1] 79 Phil., 780

D I S S E N T I N G

PERFECTO, J.,

The present litigation calls for the interpretation, application, and enforcement of the first clause of section 9 of Article VIII, of the Constitution which reads as follows:

"The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. * * *"

The provision is founded on the age-long conviction that judicial inamovability or permanent tenure of office for judges is an indispensable condition to keep judicial independence, the cornerstone of systems of administration

capable of rendering true justice, without fear or favor.

While the administration of justice is not entrusted to angels or supernatural persons but to human beings— which is unavoidable while the nature of things continues to be as it is,—we have to reckon not only with human qualities and virtues but also with human failings and weaknesses. The human desire to hold and keep an official position of power and honor, offering economic security and opportunity, through public service, to earn the good will of the people is general.

There is perhaps no other government position wherein there is more demand for equanimity, prudence, fortitude and courage, than that of a judge. He is to be impartial. He has to administer justice without fear or favor. He cannot betray his duties to please his friends or take revenge against or surrender to his enemies. More often than not, he will have to decide against the powerful in government, in the world of finance, in the industrial field, in religion, in politics, in labor, in the army, in other armed bodies, or any other social cross-section. He must have to muster the necessary courage never to shirk his responsibility under any circumstance against odds, regardless of who are the parties affected favorably or unfavorably. To have him perform his official functions, which may affect all the rights of human beings, their life or death, their happiness or doom, it has been thought wise to guarantee for him a permanent tenure of office, so as to preclude the possibility of compelling him to bargain for his continuance in office. Although that guarantee would not make the judiciary venal proof, it will offer to the average judge that security in office that will allow him to face unperturbed the machinations of intrigue, the insidious approaches and cajoling of any evil influence, the bullying of the powerful. Such is the reason for the constitutional provision above quoted.

The guarantee therein embodied, to be really effective, should be interpreted and applied with the constitutional purpose always in mind.

For several years prior to February 16, 1946, petitioner was a cadastral judge. On said date, he assumed the position of judge-at-large of first instance upon an ad interim appointment issued on February 11, 1946.

On July 9, 1946, said appointment was disapproved by the Commission on Appointments. The Secretary of Justice informed petitioner that he was separated from the service.

Within a year, petitioner filed with us a petition where in he raised the question as to whether or not he retains the position of cadastral judge, seeking the protection of section 9 of Article VIII of the Constitution.

The controversy is narrowed down to whether or not petitioner's assuming the position of judge-at-large in virtue of the ad interim appointment dated February 11, 1946, had the effect of depriving him of his position as cadastral judge.

The Court is divided on this question. One side maintains that the fact that petitioner accepted the position of judge-at-large and took, therefore, the corresponding oath of office on February 16, 1946, amounted to a waiver of his right to hold the position of cadastral judge during the term fixed and guaranteed by the Constitution. We hold a contrary position, which is fully supported by the decision of this very Supreme Court in the case of *Santiago vs. Agustin* (46 Phil., 14).

Geronimo Santiago was elected member of the Municipal Board of Manila during the elections held on June 6, 1922. He took possession of his office on October 16, 1922. Sometime later, he was chosen President of the Municipal Board.

The position of Mayor of Manila was vacant. On November 17, 1923, Governor General Leonard Wood designated him as Acting Mayor of Manila until further notice. On the same day, he took the oath of office as

Acting Mayor and entered upon the performance of the duties of the office.

On November 19, 1923, Governor General Wood issued an ad interim appointment to Geronimo Santiago as Mayor of Manila, effective as of November 17, 1923 and submitted the appointment to the Senate for confirmation. On December 14, 1923, the Senate disapproved the appointment.

On December 16, 1923, Geronimo Santiago reassumed the office of member of the Municipal Board. On June 1, 1924, the Court of First Instance of Manila issued a preliminary injunction retraining Santiago from exercising his powers and discharging his duties as member of the Municipal Board. On June 7, 1924, while the preliminary injunction was enforced, Governor General Wood named Segundo Agustin in the place and stead of Geronimo Santiago to hold the office of member of the Municipal Board. The appointment was issued ad interim pending final action of the courts as to the legality of Santiago's incumbency. Agustin entered upon the performance of the duties of his office. On June 7, 1924, the preliminary injunction was lifted, but Agustin remained in and Santiago remained out of the office of member of the Municipal Board.

Santiago made demand upon Agustin for the office, but Agustin refused to give it up. Agustin invoked section 2448 of the Administrative Code which provides that "No city officer (of the City of Manila) shall hold more than one office unless expressly so provided by law" and the well settled rule of the common law that he who, while occupying one office, accepts another incompatible with the first, ipso facto vacates the first office and his title is thereby terminated without any other act or proceeding (Mechem on Public Officers, section 420 et seq.).

The Supreme Court said: "A public office may also become vacant by abandonment. But in order to constitute an abandonment of office, it must be total, and under such circumstances as clearly to indicate an absolute relinquishment. Temporary absence is not sufficient. Instead, there must be an intention, actual or imputed, to abandon the office (Attorney General vs. Maybury, [1905], 141 Mich., 31; State vs. Huff [1909], 172 Ind., 1.)

Applying the above principles to the case of Geronimo Santiago this Court said: "He did not at any time disclose an intention to abandon the office of member of the Municipal Board. There was no resignation, express or implied, from the latter office" and he was never actually Mayor of the City of Manila.

No one may reasonably dispute that the position of Mayor of Manila, ad interim appointment to which was accepted by Geronimo Santiago, is incompatible with the office of member of the Municipal Board and with that of the President of the Municipal Board which Geronimo Santiago was occupying at the time he took the oath of office and entered upon the performance of his duties as Mayor of Manila. If the Senate confirmed his ad interim appointment of November 19, 1923, no one would have questioned that he would have ipso facto vacated his position as member of the Municipal Board.

We are of the opinion that there is no reasonable person who can find any substantial difference between the Santiago case and that of petitioner's.

The argument that the decision in the Santiago case cannot be invoked by petitioner because Santiago was designated only as Acting Mayor is not fair, because it is based on a partial presentation of facts, which ignores the fact that, on November 19, 1923, Governor General Wood issued in favor of Santiago an ad interim appointment which was submitted to the Senate for confirmation, and that appointment completely superseded and wiped out from the scene the designation as Acting Mayor.

Petitioner's ad interim appointment as judge-at-large is the same as Santiago's ad interim appointment as Mayor, and both have been equally disapproved. Referring to said ad interim appointment of Santiago, the Supreme Court said that Governor General Wood "tried to appoint Mr. Santiago as Mayor of the City of Manila, but that appointment was not complete due to the failure of confirmation by the Philippine Senate." There is no reason at

all why the same pronouncement of lack of completeness may not be applied to petitioner's ad interim appointment as judge-at-large which was disapproved by the Commission on Appointments. Undoubtedly, because of incompleteness, the Supreme Court decided in favor of Santiago's retention of his position as member of the Municipal Board. The same reasoning, if judicial consistency has any meaning, should be applied to petitioner. The rule which was good in favor of Santiago should be good for petitioner, unless this Supreme Court should apply double legal standards, one for predilects and another for outcasts.

The best argument that may be adduced against petitioner is the decision in the Zandueta case[1] (38 Off. Gaz., 2352), but said decision cannot stand analysis.

On June 2, 1936, Francisco Zandueta was appointed judge of first instance to preside over Branch 5 of the Court of First Instance of Manila. This appointment was approved by the Commission on Appointments on September 8, 1936.

Manila was then designated as the 9th Judicial District.

On November 7, 1936, when Commonwealth Act No. 145, on judicial reorganization, went into effect, ad interim appointment was issued to Zandueta to preside over the Court of First Instance of Manila and Palawan, which formed part of the 4th Judicial District. Because the Commission on Appointments failed to act on said appointment, on November 20, 1937, a second ad interim appointment was issued, and Zandueta took the oath of office on November 22, 1937. On May 19, 1938, the Commission on Appointments disapproved the appointment.

This Court in a decision promulgated on November 28, 1938, declared that Zandueta ceased to be judge of first instance, having lost his position to which he was appointed on June 2, 1936, for having accepted the appointment of November 20, 1937, the one turned down by the Commission on Appointments, upon the theory that he abandoned the position to which he was appointed on June 2, 1936, and the presumption of abandonment is based upon the theory of incompatibility between said position and that which was the subject of the ad interim appointment of November 20, 1937. The reason adduced to show incompatibility is that the territorial jurisdiction of the second position extended to Palawan.

This theory of incompatibility is inconsistent and does not dovetail with the same theory of this very Supreme Court in the Santiago case, where this Court did not say anything incompatible with Santiago's functions as member of the Municipal Board where he was only a member of a deliberative body with semi-legislative function of enacting ordinances, and his position as Mayor of Manila, with executive functions to execute and enforce not only ordinances but the laws enacted by the legislature. If there was no incompatibility in the Santiago case, it is beyond comprehension of a reasonable person that an incompatibility could be seen in the Zandueta case, unless upon the assumption, which must be rejected, that in the Santiago case the Supreme Court acted blindly, or in the Zandueta case, it tried to see reality in a ghost.

The weakness of the decision in the Zandueta case may further be emphasized by the fact that it side-stepped the important constitutional question squarely raised in the case, the Court seeking a false refuge in an erroneous application of the theory of estoppel, as pointed out in the concurring opinion of Mr. Justice Laurel, who said: "I think the constitutional issue thus squarely presented should be met courageously by the Court, instead of applying to the petitioner the doctrine of estoppel which, in my humble opinion, is entirely inapplicable. The life and welfare of this government depends upon close and careful observance of constitutional mandates. For this reason, in clear cases, this Court should not hesitate to strike down legislative acts in conflict with the fundamental law. This Court is perhaps the last bulwark of constitutional government. It shall not obstruct the popular will as manifested through proper organs. It will adapt itself to the needs of an ever expanding present and face- the future with a clear insight into economic and social values. It will keep itself alive to the dictates of

national policy. But, in the same way that it cannot renounce the life breathed into it by the Constitution, so may it not forego its obligation, in proper cases, to apply the necessary corrective."

If there was no incompatibility in the Santiago case and the wrong decision in the Zandueta case cannot over rule the doctrine therein laid down, there is no reason why incompatibility can be invoked to presume that petitioner in the present case has abandoned his position as cadastral judge when he assumed the position of judge-at-large. As correctly stated by petitioner, both positions have similar rank, duties, powers and privileges. By section 1 of Commonwealth Act No. 304 cadastral judges "shall have the same rank, powers and privileges enjoyed and granted to judges of first instance," and Executive Order No. 395, dated December 24, 1941, provides that cadastral judges shall have "general jurisdiction through-out the Philippines to try and determine all cases cognizable originally or on appeal by the courts of first instance."

Petitioner has not abandoned his position as cadastral judge when he assumed the position of judge-at-large. When he took the oath of office as a judge-at-large he only performed perfunctorily, as a matter of form, the official routine that would have entitled him to a small increase in salary, his last appointment having mainly the purpose not of changing his position which remained to be the same, but of entitling him to collect an increased salary. It is a general practice that for an officer or employee to be entitled to collect an increased salary, a new appointment must have to be issued to him for the same position embodying a statement of the increased salary. If the new appointment is disapproved, the employee does not cease from holding his position of office. It only deprives him of the right or privilege of enjoying the increase of salary.

There is absolutely no reason why the same rule cannot be applied in petitioner's case, which substantially is the same as the hundreds of thousands of cases, which are happening everywhere in many branches of the government, in obedience to the constitutional guarantee that protects all officers and employees in the civil service from removal or suspension except for cause as provided by law (section 4, Article XII of the Constitution).

That constitutional guarantee of permanent tenure of office which protects all officers and employees in the civil service is also given to judges under the terms of section 9 of Article VIII of the Constitution, with the difference that the causes for their removal from office are limited to those mentioned in section 1 of Article IX and cannot be changed by laws enacted by Congress.

The guarantee for a relatively permanent tenure of office in favor of officers and employees in the civil service and judicial officers is for the purpose of protecting them against the powerful who may seek their removal out of spite or revenge because of an unfavorable action that, in the performance of official duty, the officer, employee, or the judge had to take in obedience to law and to the dictates of conscience. The guarantee is even stronger in favor of judges for the very strong reasons that judicial independence is universally recognized as indispensable for the effective administration of justice.

The issue in this case is more far-reaching than many could suspect. It goes to the very root of our judicial machinery and demands from this Supreme Court an unequivocal answer whether or not it has the wisdom and courage to fulfill its duty in upholding an independent judiciary.

Many cases may be cited of judges who, notwithstanding their having occupied positions in the executive department, had not for that reason lost their judgeships. Such was the case of a judge whom President Quezon appointed as sugar investigator. He remained in the judiciary until he became Chief Justice of the Supreme Court. Mr. Justice Roberts, of the United States Supreme Court, was appointed and acted as investigator of the Pearl Harbor disaster that started the Pacific war, but remained to be a member of said tribunal. The same thing happened to Mr. Justice Jackson, also of the highest tribunal of the United States of America, who was appointed

to and assumed the position of prosecutor of the Nazi war criminals in the Nuremberg trials. We have also the case of Judge Amparo of the Court of First Instance of Nueva Ecija who was brought to Manila to preside over an investigating committee in the executive department. He continues to be a judge and no one has ever hinted that he had lost his judgeship.

If incompatibility of functions is to be taken as ground to conclude that there is abandonment or waiver of a judicial position, an argument that is now brandished against Judge Summers, notwithstanding the fact that in assuming the position of judge-at-large, he continued exercising exactly the same judicial functions that he has been exercising as cadastral judge, the sameness being expressly declared and provided by law, why is it that the same yardstick has not been applied to the cases we have just mentioned, where the judicial officers have exercised non-judicial executive functions, absolutely alien to their respective judicial functions?

Why should we give to Judge Summers ground to complain that he has been discriminated against because of an official inconsistency that the Supreme Court dares not to blast?

Keen observers point out as the main cause of the current troubles in Central Luzon lack of faith and confidence. The peasants have lost confidence in the government and faith in the men running it. They believe that they cannot trust the protection of their rights and liberties to official agencies and that there are not men in the government who can give redress to their grievances. They were told that they can put in the government persons in whom they have confidence through elections. They would counter with the grim fact that they have elected such persons, but they were not allowed to take their seats.

Popular faith and confidence cannot be aroused and kept alive with a token democracy. It is not enough to set up a Republican government, with a democratic structural skeleton whose front offers all the appearances of popular sovereignty. The people will not be satisfied with anything less than true democracy in action, where the sincerity of the persons holding positions of leadership and responsibility would not be found wanting in actual test. It is useless to panegyrize democracy as the best political system ever conceived, when once put into practice it is sabotaged by the double-dealing of the men on whose shoulders weighs the responsibility of making it a success. A sham democracy is a fertile breeding ground for any doxy that may offer the allurements of a promissory land, where the masses will enjoy better conditions of life. No genuine democracy can exist where there is no free and clean elections, where the chosen representatives of the people are cheated of the positions to which they were elected, where the unfortunate are denied the same opportunities for economic and social advancement and to seek redress against any injustice as the most fortunate individuals in the community, where the judicial independence, as guarantee for a courageous administration of justice, is jeopardized, and where the highest Tribunal would deny protection to inferior judges whose independence is the object of unconstitutional onslaughts.

For all the foregoing, we vote to grant the petition, so that petitioner may continue enjoying his position as cadastral judge until he reaches the constitutional age limit.

DISIDENTE

BRIONES, M.:

Se halla envuelto en este asunto el principio constitucional de la inamovilidad de los jueces—principio que constituye la base de una judicatura fuerte, imparcial, absolutamente independiente e inmune a los vaivenes y sacudidas del flujo y reflujo de la política partidista al uso. La decisión de la mayoría, siento tener que decirlo, no deja bien parado dicho principio. De ahí la presente disidencia.

La decision se funda practica y sustancialmente en la sentencia dictada en el caso de Zanduetta contra De la Costa,[1] 38 Gac. Of., 2352. No estoy conforme con la doctrina sentada en aquel asunto. Personalmente creo que la Corte Suprema perdio en el mismo una preciosa oportunidad para establecer sobre bases firmes e incon-movibles la independencia de nuestra judicatura declarando inconstitucional el cese automatico de los jueces con motivo de la ley de reorganizacion judicial que dio lugar a dicho asunto, y evitando de esta manera que sobre la cabeza del pobre juez estuviese suspendida como una ominosa espada de Damocles la amenaza de una reorganizacion, y acabando consiguientemente con el vergonzoso y deprimente espectaculo de que a raiz de cada reorganizacion judicial los jueces hiciesen antesala en las oficinas o en la residencia de los poderosos para asegurar la continuidad de su ejercicio. (Es de celebrar, sin embargo, que una opinion publica mas militante y la presencia en las camaras legislativas de elementos progresivos vitalmente preocupados por el principio de la independencia judicial, hayan impedido que la ultima ley de reorganizacion, aprobada recientemente, tuviera el efecto catastrofico de leyes similares en el pasado.)

Con todo, sostengo que, aun a la luz de la doctrina sentada en el caso de Zanduetta, el recurrente Juez Summers tiene derecho a ser repuesto en su anterior cargo de Juez de Catastro. Zanduetta perdio su asunto por haber llegado esta Corte a la conclusion de que habia incompatibilidad entre la Sala que el tenia antes de la reorganizacion y la Sala que acepto despues, pues a esta se aiiadio el juzgado de otra provincia. En otras palabras, se declaro que el Juez Zanduetta habia renunciado por abandono su anterior Sala al aceptar otra diferente. Como se ve, la sentencia se fundo en la teoria de que cada distrito judicial, con su jurisdiction territorial limitada, es diferente de otro distrito y, por tanto, incompatible con el mismo.

En el presente asunto, sin embargo, el cargo de Juez de Catastro que Summers abandono no era incompatible con el cargo de Juez at-large que acepto, pues ambos juzgados no ejercian jurisdiction sobre un area territorial circunscrita, sino que la ejercian al traves de todo el pais. Por virtud de la Orden Ejecutiva No. 395, serie de 1941, que tenia caracter de ley y estaba vigente cuando Summers fue nombrado Juez at-large, el Juez de Catastro quedo practicamente convertido en Juez at-large. Asi que no puede decirse que la aceptacion de lo uno era incompatible con la aceptacion de lo otro, y ninguna sutileza argumen-tista podria jamas convencer a nadie de lo contrario. Hay ciertas cosas que son tan de sentido comun que resulta superfluo argiir sobre ellas.

Se dice que Summers, si queria conservar su juzgado de catastro, lo que debia haber hecho era no haber aceptado su nombramiento de Juez at-large, o haberlo aceptado mediante protesta o reserva. De donde resulta que a Summers se le castiga precisamente por haber ejecutado un acto de cortesia y disciplina oficial, aceptando un nombramiento que creyo se le tendia de buena fe y no como una celada para echarle de la judicatura por la puerta trasera. Lo menos que se puede decir es que la teoria me parece peregrina. No solo fomenta la descortesia, la indisciplina, sino que, ademas, justifica el recelo, la suspicacia, haciendo que el Juez, al recibir un nombramiento, se ponga en guardia y sospeche de que se le tiende un lazo para eliminarle. La teoria, como teoria de gobier-no, me parece subversiva. No comprendo como se le pueda tomar en serio.

Me parece mejor, mucho mejor, la teoria de la franqueza. Si el Juez acepta un nombramiento del Ejecutivo dentro de la misma judicatura y despues ese nombramiento no es aprobado por la Comision de Nombramientos por motivos que no constituyen motivo de destitution contra el Juez, la mejor teoria es que esa aceptacion no se interprete en su contra, sino que se le devuelva a su anterior destino. En otros terminos, no se debe aceptar una teoria que permita la remocion del Juez por metodo indirecto como es un nuevo nombramiento. Si hay algo contra el Juez, deben seguirse estrictamente los tramites que senalan la constitucion y las leyes para su remocion.

Voto, por tanto, en favor del recurso.

[1] 66 Phil., 615

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