

**JOSE M. TUMULAK, PETITIONER, VS. PROTOLICO EGAY,
RESPONDENT.***G.R. No. L-2451. February 24, 1949*

Ponente: BENGZON, J.

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Through this quo warranto proceeding filed in August, 1948, the petitioner seeks to wrest from respondent the position of justice of the peace of the municipalities of Gigaquit and Bacuag, province of Surigao. He alleges that in December, 1932, he became the duly appointed judge of said towns and acted accordingly until August, 1942, when the Japanese seized the province; that after the liberation, and in January, 1946, he received from President Sergio Osmeña an appointment ad interim for the same position; that in May, 1946, he duly qualified and assumed the office; that thereafter he went to Cebu to fetch his family, but upon returning he found the respondent Protolico Egay occupying the post beginning July, 1946; that he "had no other remedy" but to "accept the situation"; that in February, 1948, he was informed of the decision of this Court in *Tavora vs. Gavina*,^[1] that thereafter and pursuant to said decision he asked the Department of Justice for reinstatement; and that, having failed to obtain relief, he instituted this litigation to vindicate his right to the office.

Required to answer, respondent submits a motion to dismiss the case, asserting that the action has lapsed because it was commenced more than one year after the cause of action had accrued.

The Rules provide that:

"SEC. 16. Limitations.—Nothing contained in this rule shall be construed * * * to authorize an action against an officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose; * * *" (Rule 68, Rules of Court, p. 139.)

There is no question that petitioner's right of action, if any, accrued in July, 1946, when respondent allegedly usurped the office. From that day to August, 1948, more than one year has elapsed. This petition is, therefore, out of time and may not be entertained. (*Bautista vs. Fajardo*, 38 Phil., 624; *Abeto vs. Rodas*, supra, p. 59 46 Off. Gaz., 930-938).

During our deliberations, some doubt was expressed as to the validity of this period of limitation when it refers to officers whose tenure is protected by the Constitution. Reduced to its simplest terms, the position seems to be that a statute may not limit the period within which a constitutional right should be asserted or enforced before judicial tribunals. The statement, however, would, in effect, contradict settled doctrines and practices. For instance, the right to recover real property admittedly prescribes after ten years; yet nobody will deny that such right is verily protected by the Constitution. Contracts are guaranteed by the Constitution; but none question the applicability of the statute of limitations to belated proceedings to enforce contractual obligations.

Furthermore, constitutional rights may certainly be waived,^[2] and the inaction of the officer for one year could be validly considered as a waiver, i.e., a renunciation which no principle of justice may prevent, he being at liberty to resign his position anytime he pleases.

And there is good justification for the limitation period: it is not proper that the title to public office should be subjected to continued uncertainty, and the people's interest requires that such right should be determined as speedily as practicable.

Remembering that the period fixed may not be procedural in nature, it is quite possible that some persons will question the validity of the "rule of court" on the point. However, it should be obvious that if we admit the inefficacy of the particular rule of court hereinbefore transcribed, the previous statute on the subject (Act 190, section 216)—equally providing for a one-year term—would automatically come into effect, and we return to where we started: one year has passed.

It is also suggested that according to *Agcaoili vs. Suguitan*,^[3] the one-year period does not refer to public officers, but to corporations. In that litigation, it is true that the court, on this particular point, decided by a bare majority, the case for the petitioner on two grounds, namely, (a) the one-year period applies only to actions against corporations and not to actions against public officers and (b) even if it applied to officers the period had not lapsed in view of the particular circumstances. However, upon a reconsideration this Court "modified" the decision "heretofore announced"^[4] by limiting it to the second ground.

And thereafter—this is conclusive—this Court, with the concurrence of justices who had signed the original *Agcaoili* decision, expressly applied the one-year period in a quo warranto contest between two justices of the peace.^[5]

Wherefore, the petition is dismissed, with costs. So ordered.

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

[1] 70 Phil., 421.

[2] *U. S. vs. Laranja*, 21 Phil., 500; *U. S. vs. Kilayco*, 31 Phil., 371.

[3] 48 Phil., 676,

[4] 48 Phil., 707, 708.

[5] *Lim vs. Yulo*, 62 Phil., 161.

CONCURRING AND DISSENTING

FERIA, J.:

I concur in the dismissal of the petitioner's petition or action of quo warranto on the ground that it is barred by the statute of limitation specially provided in Sec. 16, Rule 68, Rules of Court, taken substantially from Sec. 216 of Act No. 190, because the respondent has filed a motion to dismiss on the ground that the petitioners cause of action is barred by statute of limitation Sec. (e) Rule 8 of the Rules of Court.

Had not the respondent filed a motion to dismiss on that ground, or alleged the statute of limitation as a defense in his answer in case he had not filed a motion to dismiss, this Court could not dismiss the petitioner's petition on said ground. Because, according to Sec. 10, Rule 9, "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except the defense of failure to state a cause of action" and "that the court has no jurisdiction over the subject-matter." And bar of an action by the statute of limitation is one of said objection or defenses.

But I dissent from the decision in that, besides correctly citing the ruling of this Supreme Court in the case of *Bautista vs. Fajardo*, 38 Phil. 624, which is one of the several cases in which this Court has declared that the period of one year within which a petition for quo warranto must be filed, fixed by Sec. 216 of Act No. 190 and reproduced in Sec. 16, Rule 68, is a limitation of action as clearly stated in the caption of said sections 216 and 16, it also cites in support of the decision the case of *Abeto vs. Rodas*, [6] L-2041, promulgated on November 3, 1948, in which it was held by the majority of the members of this Court that the said period of time is not a limitation of action, but a condition precedent or essential element of the petitioner's right of action. For in said case of *Abeto vs. Rodas*, this Court dismissed the petition of Judge Abeto because it was filed more than one year after his cause of action accrued, although the respondent Judge Rodas had not filed a motion to dismiss on the ground that Abeto's action is barred by the statute of limitation, nor an answer alleging the statute of limitation as a defense.

By citing the cases of *Bautista vs. Fajardo*[7] and *Abeto vs. Rodas* at the same time, the decision seems to convey the idea that the period of time within which an action must be filed, may be considered indifferently either as a limitation of action or a condition precedent. We differ from that concept of two wholly different things in their nature and effects, as we have shown in our dissenting opinion in the aforementioned case of *Abeto vs. Rodas*, which we have to reproduce below to support our conclusion:

"I strongly dissent from the decision of the majority.

"The pertinent provision of Section 16, Rule 68, is substantially taken from Sec. 216 those of the old Code of Civil Procedure, Act No. 190, as amended, which read as follows:

" 'SEC. 216. Limitations.—Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose.

"This Court in construing the above quoted provisions in the case of *Bautista vs. Fajardo* (38 Phil., 624) quoted in the decision of the majority and the case of *Agcaoili vs. Suguitan*, 48 Phil., 697, has held that said section provides for limitation of an action of quo warranto.

"In the case of *Bautista vs. Fajardo* it was said:

" '* * * if a petitioner delays bringing his action, as in this case, for more than one year after his right to hold the office arises, the action is barred although the usurper or other person holding the office at the time of the institution of the proceeding to oust him may not himself have been in adverse possession for a full year.'

" "It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest dearly requires that such right should be determined as speedily as practicable. It is evident that where the action to recover an office has once prescribed it can not be revived by any change in the personality of the incumbent; and it cannot be admitted that a new right, different from that which he had previously possessed, accrued to the petitioner upon May 6, 1917, when the respondent was inducted into office. If the petitioner had any right it had existed at least from the beginning of the official term, and the prescription must be computed from that date.' (38 Phil. 627, 628.)

And in the case of *Agcaoili vs. Suguitan*, this Court held:

" 'In our opinion, even granting that section 216 is applicable to the appellant, the period of prescription had not begun to run at the time of the commencement of the present action. He was justified in delaying the commencement of his action until an answer to his protest had been made. He had a right to await the answer to his protest, in the confident belief that it would be resolved in his favor and that action would be unnecessary.' (48 Phil., 676, 697.)

The very caption of the above quoted provisions, and of section 16, Rule 68, plainly shows that it refers to 'Limitation' of action. Second paragraph of Act 336 of the Code of Commerce which provides that:

'The purchaser shall have a right of action against the vendor for defect in the quantity or quality of merchandise received in bales or packages, provided he brings his action within the four days following that of its receipt, and the damage is not due to fortuitous event, inherent defect of the thing, or fraud.'

It has been construed by this Court, in the case of *Ban Kiat & Co. vs. Atkins, Kroll & Co.* (44 Phil. 4, 12-13), to provide for limitation of actions, because it refers to the time for bringing an action, and therefore it was superseded by the statute of limitation contained in the old Code of Civil Procedure, according to this Court.

The provisions of our law on quo warranto were taken from the laws or statutes in force in the States, and there is no statute or decision in the States of the Union which considers the time within which a special civil action of quo warranto as a condition precedent to the institution of the action. It has always been construed or established as a limitation of action (51 C. J., p. 330; 44 Am. Jur. p. 62).

The limitation provided for in said Section 16, Rule 68 applies not only to action against an officer for the ouster from office, whether a public office or an office in a private corporation, but also to actions against a corporation for forfeiture of charter, and against the person ousted for damages. It was substantially taken from Secs. 211 and 216 of old Code of Civil Procedure, and it can not have a different import from the letter's provisions, because this Supreme Court has no power under the Constitution to promulgate Rules providing for limitation of actions, as well as conditions precedent to the bringing of an action, for they are not matters of procedure, pleading and practice, but of substantive law. Said Sec. 211 provided that the person declared entitled to the office may, at any time within one year after the date of the judgment, bring an action against the person ousted and recover the damages sustained by reason of his usurpation; and Sec. 216 prescribed that no action shall be brought against a corporation for forfeiture of charter, or against an officer to be ousted from his office unless within one year after the oase of such ouster or the right to hold office arose. Besides, there is absolutely reason why the time within which such actions must be instituted should be considered as a condition precedent to the institution of an action or right of action.

In the case of *Sempio vs. Del Rosario*, 44 Phil. 1, this Court construed the period of nine days as a condition precedent to or essential element of the right of legal redemption, because said period refers to the exercise of legal redemption and not to the institution of the action to redeem. That is, that the legal redemptioner in such case has, within that period, to exercise his right or make demand upon the purchaser of an adjacent rural estate with an area less than one hectare and offer the repurchase price, because if he does not do so he loses or waives his right of legal redemption. If the latter refuses to accept it, he may file the corresponding action at any time with the corresponding period of limitation provided by law. A substantive right may be exercised without necessity of instituting a judicial action against the one having the correlative obligation, unless the latter refuses or fails to perform it.

The extinction of a substantive right must be distinguished from the bar by the statute of limitation of the action to enforce it. The right to institute an action may be barred by the statute of limitation, and yet the substantive right subsist, as shown by the fact that if the defense of prescription of action or statute of limitation is not set up, the plaintiff or the person having the right may enforce it may recover. But the extinction of a right carries necessarily with it the extinction of the corresponding right of action, as well stated by the late Chief Justice Arellano in the case of *Domingo vs. Osorio* (7 Phil. 405)."

[6] *Supra* p. 59.

[7] 38 Phil., 624.

DISSENTING

PERFECTO, J.:

We are of opinion that the petition should be granted, and so we vote.

To deny the petition because it was filed more than one year after the cause of action had accrued, by applying to that effect the limitation provided in Section 16 of Rule 68, Rules of Court, is a grievous error that should not be allowed unobjected to.

We are of opinion that Section 16 of Rule 68 cannot impair judicial tenure of office as guaranteed by the Constitution, and our position in this respect has been explained in our opinion in the case of *Abeto vs. Rodas*, L-2041, *supra*.

The argument by analogy as to constitutional guarantees of properties and contracts has no force. The constitutional guarantees as to properties and contracts are conditioned by due process of law, and prescription and the statute of limitations provided by law under which property and rights under a contract may be lost, satisfy the constitutional requirement of due process.

If applied to judicial tenure of office, Section 16 of Rule 68 would not satisfy the guarantee of due process of law. As hinted in the majority decision, the one-year limit provided therein is based on the presumption of waiver. That presumption cannot exist in the case of petitioner *Tumulak*. The fact that he has instituted the action in this case is a conclusive evidence that he has not renounced his right to continue occupying his judgeship. A presumption that an attitude has been adopted cannot prevail upon the reality that such attitude has never been adopted. A legal or technical presumption regarding a reality cannot prevail against the reality itself.

DISIDENTE

BRIONES, M.:

Estimo que el recurrente tiene derecho a ser repuesto en su cargo. No cabe alegar prescripcion contra el recurso, porque el art. 16, regla 68 de los tribunales, que trae su origen de los arts. 211 y 216 de la ley No. 190 (antiguo Codigo de Procedimiento Civil), se refiere solamente a oficiales o funcionarios de corporaciones particulares y no es aplicable a funcionarios publicos (*Agcaoili contra Suguitan*, 48 Jur; Fil., 717).

En el asunto citado se suscito la misma cuestion planteada en el que nos ocupa. La Corte Suprema, en una sentencia de 6 contra 3, resolvió categoricamente que el articulo 216 del Codigo de Procedimiento Civil no era aplicable a funcionarios publicos sino solo a los de corporaciones. No veo ninguna razon por que se va a abrogar ahora una doctrina tan sana como la sentada en el referido asunto.

"* * * La regla de que las leyes de prescripcion no obligan al rey (al Estado) o al pueblo, se aplica a procedimientos de quo warranto, siendo la regla la de que el representante del Estado puede presentar una querella a nombre del pueblo en cualquier tiempo; y el transcurso del tiempo no constituye impedimento alguno a las actuaciones, con arreglo a la maxima *pillum tempos occurrit regi*. (*Catlett vs. People*, ex rel. State's Attorney. 151 Ill., 16.) El que el Estado pretenda que las leyes de prescripcion no se aplican a el y sin embargo insista en que puede interponerlas para impedir un juicio de quo warranto entablado por uno de sus funcionarios publicos a quien el mismo ha privado de su cargo, nos parece injusto, inequitativo e irrazonable y

no cae dentro de las reglas de sana jurisprudencia," (Agcaoili contra Suguitan, supra, p. 954.)

En la sentencia citada la Corte desarrolla el argumento de que tal como esta redactado el artículo 216 de la ley No.190 (la redacción del artículo 16, regla 68, del presente reglamento de los tribunales, es enteramente igual), no puede referirse en su segunda parte u oración, que viene después de un punto y coma, mas que a los oficiales de una corporación, puesto que la primera parte trata de la acción de quo warranto contra una corporación. He aquí el argumento que para mí sigue siendo tan inexpugnable como cuando se expuso por primera vez:

"Pero aun concediendo que el apelante queda obligado por las disposiciones del artículo 216[8] según aparece en inglés, es dicho artículo aplicable al apelante? Consultando dicho artículo arriba citado en inglés, se vea que después de la palabra "committed" hay un punto y coma. Lo que viene después del punto y coma se refiere acaso a la misma materia que le precede? Un punto y coma es una marca de puntuación gramatical, en el lenguaje inglés, para indicar una separación en la relación del pensamiento, un grado mayor que lo expresado por la coma, y lo que sigue al punto y coma debe tener relación con la misma materia que le precede. Lo que sigue a un punto y coma siempre tiene relación con la misma materia de aquello que le precede. Un punto y coma no se usa con el fin de introducir una nueva idea. Se usa el punto y coma con el fin de continuar la expresión de un pensamiento, un grado mayor que lo expresado por una simple coma. Nunca se usa con el fin de introducir una nueva idea. Se usa la coma y el punto y coma ambos para un mismo fin, a saber, para dividir oraciones y partes de oraciones, con la única diferencia de que el punto y coma hace la división un poco más pronunciada que la coma. Siempre puede hacerse referencia a la puntuación en una ley con el fin de determinar el verdadero significado de una ley dudosa. Siguese por tanto que comoquiera que todas las disposiciones de dicho artículo 216 que preceden al punto y coma se refieren solamente a las corporaciones, lo que sigue a dicho punto y coma tiene referencia a la misma materia o a los funcionarios de una corporación."

El Magistrado Sr. Malcolm, en su opinión concurrente, desenvuelve el mismo argumento con claridad y vigor, si bien en forma más breve y condensada, a saber:

"(B) La acción del demandante no ha prescrito en virtud de las disposiciones del artículo 216 del Código de Procedimiento Civil. Ese artículo se contrae particularmente a una acción "contra una corporación." Mas adelante, después de un punto y coma, viene esta cláusula "tampoco se podrá iniciar un juicio contra la persona que ejerza un cargo," que plenamente se retrotrae a "corporación." De otro modo, la nueva idea se nubiera expresado ya en un artículo separado, ya en una oración separada. Que esto es cierto lo corrobora, además, la traducción al castellano, haciendo uso de la frase "la persona que ejerza un cargo en una corporación," que tenemos el privilegio de consultar para explicar alguna ambigüedad en el texto en inglés." (Agcaoili contra Suguitan, supra, pp. 741, 742).

Pero aun concediendo por un momento que la regla sobre prescripción es aplicable al recurrente, sostengo que el plazo de un año no debe contarse desde el mes de Julio de 1946 en que el recurrido comenzó a ocupar el cargo sino desde el 20 de Marzo de 1948, fecha de la comunicación del Secretario de Justicia en que se denegó la solicitud presentada por el recurrente para su reposición, o en todo caso desde que quedó firme la sentencia en el asunto de Tavora contra Gavina y Arciaga, (45 Gac. Of., 1769, 1776,)[9] El presente recurso se registró en nuestra ascribanía el 26 de Agosto de 1948; por tanto, muy dentro del plazo de un año señalado por la ley de prescripción, si el mismo se cuenta desde cualquiera de las dos últimas fechas.

Es preciso tener en cuenta que el presente caso así como el de Tavora y otros congéneres no son casos ordinarios de despojo y usurpación, sino que han sido el resultado de una política básicamente errónea del Gobierno al considerar cesantes a los "jueces de paz" y a preguerra en virtud de la solución de continuidad causada por la ocupación japonesa. El caso de Tavora fue un "test case", un caso de prueba. El caso no era solo de Tavora, sino de todos los jueces de paz colocados en la misma situación. Por tanto, en equidad y en justicia, el período de prescripción, suponiendo que existiera, tenía que quedar interrumpido para todos, hasta que el asunto se decidiese

finalmente por este Tribunal Supremo. Es aplicable al presente caso lo que el Maglstrado Sr. Malcolm dijo en su citada opinion concurrente en el asunto de Agcaoili contra Suguitan, a saber:

"(C) Aun en el supuesto de que el articulo 216 delCodigo de Procedimiento Civil sea aplicable, aun no resulta claro que haya trascurrido un año siguiente a la fecha de la comision del necho que did motivo a su privacion. En realidad, no na existido motivo alguno para la privacion, puesto que fu una interpretacion erronea de la ley, que fu desaprobada por el Tribunal Supreiao, la que did por resultado la tentativa de desposeer del cargo al Sr. Agcaoili y de poner en posesion del cargo al Juez de Paz Auxillar. Lo mas que podria decirse de esa tentativa de desposeerle es que el Juez de Paz Auxiliar meramente se convirtio en juez de paz de facto." (Agcaoili contra Suguitan, supra, p, 742) .

Mi conclusion, por tanto, es que el recurrente es de paz de jure y tiene derecho a ser repuesto en su cargo. Usando la frase del Magistrado Sr. Malcolm, el recurrido no es mas que un juez de facto.

[8] * * * Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose."

"ART. 216.De las limitaciones.—Ninguna de estas disposiciones facultara la iniciacion de un juicio contra una corporacion por la perdida de sus derechos de concesion, a menos que el juicio se lleve a efecto dentro de los cinco años siguientes a la comision u omision del hecho objeto de la accion. Tampoco se podra iniciar un juicio contra la persona que ejerza. un cargo en una corporacion para desposeerla amen que se lleve a efecto dentro del año siguiente a la fecha de la comision del hecho que did motivo a su privacion, o que puso en, duda su defecho para cupar el cargo."

(Tomo I, Leyes Publicas de las Islas Filipinas.)

[9] 79 Phil., 421.

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