

JULIANA ETORMA, ROSARIO INDEFENSO AND GREGORIO SALUMBIDES, PETITIONERS, VS. LUCILA RAVELO AND THE DIRECTOR OF LANDS, RESPONDENTS.

G.R. No. L-718. March 24, 1947

Ponente: FERIA, J.

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FERIA, J.:

The petition for certiorari filed in the above entitled case on July 13, 1946, assailed the validity of the judgment of the Court of Appeals which affirmed in December, 1942, the decision of the Court of First Instance of Tayabas against the petitioners, on the ground that the judgment rendered by the Court of Appeals during the Japanese occupation was null and void, because the question involved in the litigation was the validity or invalidity of a free patent issued by the Governor General of the Philippines under the authority granted by an Act of Congress of the United States; one of the parties in the case was the Director of Lands, as officer in charge with the administration and alienation of public lands placed under the control of the Government of the Philippines; and the petitioners were claiming vested rights, not only under the laws in force in the Philippines, but also under the Act of Congress of July 1, 1902. The decision of the Court of Appeals was also attacked as being in violation of the fundamental right of the petitioners, for the reason that the judgment of the Court of First Instance of Tayabas did not contain findings of facts, that is, whether or not there was fraud in obtaining the free patent in question, and the Court of Appeals made its own findings of fact without hearing the appellants nor giving them opportunity to be heard on the questions of fact therein raised. And the petitioners prayed that the Court of First Instance of Tayabas, to which the case was remanded several years ago for the execution of the judgment by the Court of Appeals, be required to send the record of said case to this Court for consideration and decision.

We dismissed the petition for certiorari in a minute resolution of August 14, 1946, which reads as follows:

"Considering the petition filed in G.R. No. L-718, Juliana Etorma et als., petitioners, vs. Lucila Ravelo et al., respondents, praying that the decision jointly rendered in the case referred to in the petition, as well as all the proceedings had in said cases after January 1, 1942, be declared null and void; that the Court of First Instance of Tayabas be required to send up the records of said cases, and that the appeal interposed by petitioners be considered and decided by this Court: it is ordered that the petition be dismissed."

This Court did not deem it necessary to render a reasoned decision in deciding the petition for certiorari, for it considered the latter without merits. Because the decision of the Court of Appeals promulgated on December 22, 1942, which affirmed that of the Court of First Instance of Tayabas, has become final several years ago, and the judgments of the Courts in the Philippines during the Japanese occupation are valid and binding in accordance with the ruling of this Court in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113). The fact that the question involved was the validity of a free patent, and the Director of Public Lands was a party, and that the authority to grant free patent was conferred upon the Governor General, and the power to regulate the procedure to obtain it upon the Legislature of the Philippines by Act of Congress of July 1, 1902, did not make the judgment rendered thereon of political nature. The Acts authorizing and regulating the grant of free patents to

occupants or possessors of public lands are municipal laws, and the judgments of the courts which apply said laws are not of political complexion.

Now the attorney for the petitioners alleges that the ruling or doctrine laid down in the said case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* is not applicable to the present case, inasmuch as the petitioners herein had refused, by going up to the mountains, to submit themselves to the authority of the Japanese invaders and the government established by them in these Islands; and for that reason he now asks this Court to render a decision stating the reasons on which it is based, in accordance with section 12, Article VIII, of our Constitution.

The allegation that the petitioners had refused to submit themselves to the invaders was not set up in their petition for certiorari, and therefore could not properly be taken into consideration now for the purpose for which the present petition has been filed. But to meet this new contention, it is sufficient to state that the omission on the part of the petitioners or their attorney to take proper steps, if there were any, to withdraw the case appealed by them out of the jurisdiction of the Court of Appeals, which was continued by the occupant during the Japanese regime, until the latter has rendered a decision against them, constituted an implied submission to the jurisdiction of the said court, and the fact admitted in the paragraph VI of their petition for certiorari, that after the attorney for the petitioner was notified of the decision of the Court of Appeals of December 22, 1942, he had filed a motion with the Court of Appeals asking that he be granted a period of time within which to file a motion for reconsideration of said decision, was an express submission to the said jurisdiction, since the acts of an attorney in all matters of ordinary judicial procedure bind his clients (section 21, Rule 127). The subsequent filing of "an exception or protest against the decision" of the Court of Appeals, instead of a motion for reconsideration, could not have the effect of a withdrawal by said petitioners from the court's jurisdiction; for a court does not lose its jurisdiction acquired over a party by the latter's subsequent refusal to recognize it, specially after the court has decided the case against him. To allow the petitioners to avoid the decision rendered against them by the Court of Appeals would be utterly untenable, for it stands to reason that they should not assail now the validity of said judgment had it been in their favor.

The dissenting opinion of Messrs. Justices Hilado and Perfecto is made to rest, not only upon the reasons set forth in their dissenting opinion in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, *supra*, but principally on the proposition that, in deciding that the governments established in these Islands by the Japanese military forces of occupation, under the name of Philippine Executive Commission and the Republic of the Philippines, were *de facto* governments, this Court attempted to exercise a power which exclusively belonged to the political departments of the United States and the Commonwealth Government; because according to the Supreme Court of the United States in the case of *Jones vs. U.S.* (137 U.S., 202; 34 Law. ed., 691, 696), the question "Who is the sovereign, *de jure* or *de facto* of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as other officers and subjects of the Government." And after citing said excerpt of the decision, the said dissenting opinion says:

"According to the doctrine just quoted, the first question to be determined by the legislative and executive departments of the government is: Who is the sovereign of the territory? The next is: Is he a *de jure* or *de facto* sovereign? The determination of this second question necessarily decides whether the government of that sovereign is *de jure* or *de facto*, for it is not possible to speak of a sovereign in the instant acceptance of the term, without linking him with his government. And a *de jure* sovereign cannot have a *de facto* government, any more than a *de facto* sovereign have a *de jure* government. * * * Differently expressed, the proposition would be: If the question of who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial, but a political question, that of whether the government in the territory is *de jure* or *de facto*, cannot but be a political question."

This new ground is predicated upon the clearly erroneous assumption that the determination of the question whether a government is de facto or de jure involves necessarily the question of sovereignty. It is correct that a government established in a territory under a sovereign de jure is a government de jure, but it is not true that a government established in a territory under a sovereign de jure cannot be a government de facto. The three classes of governments de facto set forth in the decision of this Court in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* and recognized by all the publicist and decisions of the Supreme Court of the United States, are governments de facto established in a territory which continued under the same sovereign de jure, or in which there was no change of sovereignty. In the said case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, this Court said: "There are several kinds of de facto governments. The first, or government de facto in a proper legal sense, is that government that gets possession and control of, or usurps, by force or by the voice of the majority, the rightful legal government and maintains itself against the will of the latter, such as the government of England under the Commonwealth, first by Parliament and later by Cromwell as Protector. The second is that which is established and maintained by military forces who invade and occupy a territory of the enemy in the course of war, and which is denominated a government of paramount force, as the cases of Castine, in Maine, which was reduced to British possession in the war of 1812, and of Tampico, Mexico, occupied during the war with Mexico by the troops of the United States. And the third is that established as an independent government by the inhabitants of a country who rise in insurrection against the parent state, such as the government of the Southern Confederacy in revolt against the Union during the war of secession."

Were the theory advanced in the dissenting opinion correct, the decisions of the Supreme Court of the United States in the following cases in which it held that the governments in a territory temporarily occupied by the invading enemy forces during war, or set up by the insurgents during insurrection or rebellion, were de facto governments, would be also necessarily erroneous, and we do not think the dissenting Messrs. Justices Hilado and Perfecto mean to so hold. The Supreme Court of the United States held in the case of *U.S. vs. Rice* (4 Wheaton, 258), that the government established in Castine, Maine, occupied temporarily by the British forces in the war of 1812 was a de facto government. The same Court held in the case of *Fleming vs. Page* (9 How., 614), that the government established by the American forces in Tampico, Mexico, during the war between the latter and United States was a de facto government. In the cases of *Thorington vs. Smith* (8 Wall., 1) ; *Williams vs. Bruffy* (95 U.S., 176 [quoting the decision in the case of *Horn vs. Lockhart*, 17 Wall., 570]), and *Baldy vs. Hunter* (171 U.S., 388), it was held that the governments set up by the Confederate States during the war of secession were de facto governments. And in the case of *McCleod vs. United States* (229 U.S., 416), the same Supreme Court of the United States held that the short-lived government established by Filipino insurgents in the Island of Cebu during the Spanish American War, was a de facto government.

The dissenting opinion further says:

"If President Roosevelt had considered the regime imposed upon this country by the Japanese occupation army as a de facto government, within the meaning of International Law, he would not have branded the 'Philippine Republic' as a 'puppet government', and, since he must be presumed to know that a de facto government in international law is a form of government, with powers and duties of its own, as contradistinguished from a mere 'puppet', and that such a government is entitled to recognition among civilized nations, he would never have so vehemently announced in his message to the Filipino people on October 23, 1943, that neither the one nor the other had the recognition or the sympathy of the government of the United States—he would not have condemned them.

* * * * *

"If President Quezon and the other Filipino leaders * * * had considered (said government) as not de facto government * * *," they would not have requested of the Senate and House of Representatives of Congress of

the United States, the introduction of what later became S. J. Res. No. 93, which became law on June 29, 1944, wherein the government thus imposed upon the Filipinos by the Japanese's 'own puppet government which was conceived in intrigue, born in coercion, and reared primarily for the purpose of Japanese selfishness and aggrandizement.' "

In reply to these remarks, suffice it to say that the President and Congress of the United States in describing and branding the Philippine Executive Commission and the so-called Republic of the Philippines as puppet governments, did not recognize them as legitimate or de jure governments, and not being de jure they are de facto governments under the rules of international law. An organized government established in a territory must be either de jure or de facto, since there is no other class of organized government known in political as well as in international law. There is no genuine or false de facto government.

It is evidently erroneous to say that the majority "in laying down the doctrine in the Co Kim Cham case it has unwittingly refused to be bound by the aforesaid prior and adverse determination of the United States and Commonwealth governments." The decision of this Court in the case of Co Kim Cham vs. Valdez Tan Keh and Dizon is precisely in conformity with the previous determination of the above mentioned message of President Roosevelt and resolution and Act of Congress of the United States, in which the so-called Republic of the Philippines was branded as "a puppet government, which was conceived in intrigue and born in coercion" that is, not a government de jure. We have held in the said case of Co Kim Cham that "The so-called Republic of the Philippines, apparently established and organized as a sovereign state independent from any other government by the Filipino people, was, in truth and reality, a government established by the belligerent occupant or the Japanese forces of occupation. It was of the same character as the Philippine Executive Commission, and the ultimate source of its authority was the same—the Japanese military authority and government. As General MacArthur stated in his proclamation of October 23, 1944, a portion of which has been already quoted, 'under enemy duress, a so-called government styled as the "Republic of the Philippines" was established on October 14, 1943, based upon neither the free expression of the people's will nor the sanction of the Government of the United States.' Japan had no legal power to grant independence to the Philippines or transfer the sovereignty of the United States to, or recognize the latent sovereignty of, the Filipino people, before its military occupation and possession of the Islands had matured into an absolute and permanent dominion or sovereignty by a treaty of peace or other means recognized in the law of nations."

Therefore, the conclusion that the governments of the Philippine Executive Commission and the so-called Republic of the Philippines were now governments de facto, because they were not recognized and were called puppet governments by the executive and legislative departments of the United States, is untenable, for it is premised upon a wrong conception of what a government de facto is. It is evident that if said governments established in the Philippines had been recognized by the executive and legislative departments of the United States, they would have been de jure and not de facto governments; and they were called puppet governments because they were not established by legitimate sovereign, but they were governments de facto. It is simply gratuitous to state that "It goes without saying that a puppet government is no government at all, not even a de facto government." A puppet government is one that acts as another will or dictates. The Republic of the Philippines was a puppet government, because although set up apparently as a free and independent government, was, in truth and in fact, a government de facto established by the belligerent occupant or the Japanese military forces, as we have already stated in the case of Co Kim Cham above quoted.

And as to what may be considered as territory occupied by the enemy, and Mr. Justice Hilado's contention that the laws of international law relating to government de facto over territory occupied by Japan are not applicable, because the latter started treacherously against the United States, we may quote the following from our resolution on the motion for reconsideration filed in said case of Co Kim Cham:

"(1) It is contended that the military occupation of the Philippine Islands by the Japanese was not actual and effective because of the existence of guerrilla bands in barrios and mountains and even towns and villages; and consequently, no government de facto could have been validly established by the Japanese military forces in the Philippines under the precepts of the Hague Conventions and the law of nations.

"The presence of guerrilla bands in barrios and mountains, and even in towns of the Philippines whenever these towns were left by Japanese garrisons or by the detachments of troops sent on patrol to these places, was not sufficient to make the military occupation ineffective, nor did it cause that occupation to cease, or prevent the constitution or establishment of a de facto government in the Islands. The belligerent occupation of the Philippines by the Japanese invaders became an accomplished fact from the time General Wainright, Commander of the American and Filipino forces in Luzon, and General Sharp, Commander of the forces in Visayas and Mindanao, surrendered and ordered the surrender of their forces to the Japanese invaders, and the Commonwealth Government had become incapable of publicly exercising its authority, and the invader had substituted his own authority for that of the legitimate government in Luzon, Visayas, and Mindanao.

" 'According to the rules of Land Warfare of the United States Army, belligerent or so-called military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader is in position to substitute and has substituted his own authority for that of the legitimate government of the territory invaded.' (International Law Chiefly as Interpreted and Applied by the United States, by Hyde, Vol. II, pp. 361, 362.) 'Belligerent occupation must be both actual and effective. Organized resistance must be overcome and the forces in possession must have taken measures to establish law and order. It doubtless suffices if the occupying army can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district.' (Id., p. 364.) 'Occupation once acquired must be maintained * * *. It does not cease, however, * * *. Nor does the existence of a rebellion or the operations of guerrilla bands cause it to cease, unless the legitimate government is reestablished and the occupant fails promptly to suppress such rebellion or guerrilla operations.' (Id., p. 365.)

* * * * *

"(2) It is submitted that the renunciation in our Constitution and in the Kellog-Briand Pact of war as an instrument of national policy, rendered inapplicable the rules of international law authorizing the belligerent Japanese army of occupation to set up a provisional or de facto government in the Philippines, because Japan started war treacherously and emphasized war as an instrument of national policy; and that to give validity to the judicial acts of courts sponsored by the Japanese would be tantamount to giving validity to the acts of these invaders, and would be nothing short of legalizing the Japanese invasion of the Philippines.

"In reply to this contention, suffice it to say that the provisions of the Hague Conventions which impose upon a belligerent occupant the duty to continue the courts as well as the municipal laws in force in the country unless absolutely prevented, in order to reestablish and insure 'l'ordre et la vie publique,' that is, the public order and safety, and the entire social and commercial life of the country, were inserted, not for the benefit of the invader, but for the protection and benefit of the people or inhabitants of the occupied territory and of those not in the military service, in order that the ordinary pursuits and business of society may not be unnecessarily deranged.

* * * * *

"The fact that the belligerent occupant is a treacherous aggressor, as Japan was, does not, therefore, exempt him from complying with the said precepts of the Hague Conventions, nor does it make null and void the judicial acts of the courts continued by the occupant in the territory occupied. To deny validity to such judicial acts would benefit the invader or aggressor, who is presumed to be intent upon causing as much harm as possible to the inhabitants or nationals of the enemy's territory, and prejudice the latter; it would cause more suffering to the conquered and assist the conqueror or invader in realizing his nefarious design; in fine, it

would result in penalizing the nationals of the occupied territory, and rewarding the invader or occupant for his acts of treachery and aggression." (75 Phil., 371.)

The resolution above quoted which upholds the validity of judicial acts which are not of political complexion of de facto governments established by the military occupant in an enemy territory, is based on the Regulations of the Hague Convention that contain the generally accepted principles of International Law, adopted as a part of the law of the Nation in section 3 of our Constitution, and is supported by Dr. Lauterpacht in his 6th edition of Oppenheim, page 51, footnote, in which it is said:

" 'In particular, the illegality of the war undertaken in breach of the provisions of the Pact does not automatically deprive the guilty belligerent of the rights of warfare, including those resulting from the law of neutrality.' (P. 157.) Subsequently he adds: 'For war waged in violation of the Treaty is nevertheless war conferring upon the guilty and innocent belligerents alike all the rights flowing from the accepted law of war and neutrality.' (P. 512.) He further declares: 'No authorization to disregard the duties of neutral impartiality against the State breaking the Treaty can be deduced from the passage in the preamble which lays down that "any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty." The benefits furnished by the Treaty are immunity from war waged as an instrument of national policy, not a guarantee of the observance of rules of International Law, including the rules of neutrality.' " (International Law by Hyde, p. 1684, Vol. III, Second Revised Edition.)

Petition is, therefore, denied.

Moran, C.J., Paras, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

In addition to the legal grounds stated in the well written dissenting opinion of Mr. Justice Hilado, concurred in by us, there are strong reasons of substantial justice and equity in support of the granting of the petition.

Petitioners alleged that they have refused to submit themselves to the invaders. The majority dismissed this contention by stating that it was not set up in the petition for certiorari and, at any rate, petitioners had impliedly submitted themselves to the jurisdiction of the Court of Appeals under the Japanese regime, when they failed to take proper steps to withdraw the case from said jurisdiction. But in the majority resolution itself it appears that petitioners filed "an exception or protest against the decision" of the Court of Appeals. To our mind, that pleading was more than enough to convey to any court or person petitioners' attitude of not recognizing the authority and jurisdiction of said court.

To ask for more is to ignore the prevailing realities created by the fearsome Japanese occupation. To require petitioners to be then and there more explicit about their attitude, by stating the grounds of their protest, is tantamount to expect petitioners to ogle suicide or invite self-destruction. If petitioners had alleged the reason for their refusal to recognize the jurisdiction of the Court of Appeals they would have stated that it was because they did not recognize the authority of the Japanese imperial government under which the court was instructed to function. The Japanese would not then have wasted any time to catch petitioners to torture and execute them in Ft. Santiago or in any of the many torture chambers or zoning camps established by the enemy all over the country. Petitioners used the word "protest" which was strong and reckless enough. Only self-delusion can obliterate seeing the far-reaching meaning of a "protest" uttered under the circumstances.

We vote to grant the petition.

DISSENTING

HILADO, J., with whom concurs PERFECTO, J.:

We dissent.

With all due respect to our brethren who maintain different views from ours upon the very vital legal questions involved herein, we feel constrained to dissent from the opinion of the majority. The opinion of our said brethren has been written by Mr. Justice Feria in the form of the foregoing resolution. Said opinion is predicated upon the doctrine, from which we also dissented, laid down in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113). In registering this new dissent from that doctrine, we hope that our attitude will not be mistaken for systematic stubbornness for it is born solely of a deep conviction and inspired by the only purpose which a dissent should pursue according to the memorable words of Chief Justice Hughes:

"A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed." (*"The Supreme Court"* by Charles Evan Hughes, 1928 ed., p. 68.)

The cornerstone on which the opinion of the majority in the *Co Kim Cham* case was based is therein stated thus:

"* * * The question to be determined is whether or not the governments established in these Islands under the names of the Philippine Executive Commission and Republic of the Philippines during the Japanese military occupation or regime were de facto governments. If they were, the judicial acts and proceedings of those governments remain good and valid even after the liberation or reoccupation of the Philippines by the American and Filipino Forces." (75 Phil., 122.)

The majority held there and, in effect our said brethren maintain here, that during said "occupation" of the Islands by the Japanese Imperial Forces there existed in the Philippines such de facto governments successively under the "Philippine Executive Commission" and the so-called Republic of the Philippines. We have advisedly placed the word "occupation" within quotation marks because we do not admit that all of the Philippines was ever occupied by those invaders. In fact, it should be within the judicial notice of this Court that said occupation only affected the City of Manila and certain other specific areas of the Philippines, but that the greater area of the country was never under such an effective control of said forces as would have constituted a "belligerent occupation" as this concept is known in International Law. According to the very quotation from the Rules of Land Warfare of the United States Army on page 5 of the foregoing resolution, belligerent occupation is a question of fact. If so, it needs proof. And where is the evidence showing that the section of the country to which petitioners herein repaired and stayed for the express purpose of placing themselves beyond the effective reach and control of the Japanese invaders, was ever effectively controlled by the latter? The mere surrender of the military forces—not all of them, let us not forget, for many refused to surrender and were not only not punished but were eulogized by their very commanders in later days—did not bind the civilian population. The Commanders, Generals Wainright and Sharp, had power and control, for the purposes of the surrender, only over the armed forces and not over the civilians, and it is a matter of history that when Gen. Wainright ordered the so-called surrender he was already a prisoner of war and had previously given up his command; and as to Gen. Sharp, it is another historical fact that he did not order, much less intend to order, all his forces to surrender to the enemy, but gave discretion to those who preferred to continue the fight, to do so the best they could, so long as they detached themselves from the surrendering units.

In thus holding that during said "occupation" there existed in the Philippines such de facto governments, the majority of the Court in the *Co Kim Cham* case—be it said with all due respect—have attempted to exercise a power

which exclusively belonged to the political departments of the governments of the United States and of the Commonwealth of the Philippines, represented by the executive and legislative branches thereof. Not only this, but the majority, in so doing—again we say it with all due respect—went against the previous determination of a political question by the President and the Congress of the United States and the President of the Commonwealth of the Philippines. That question precisely was whether or not such de facto governments existed here during the Japanese occupation of the aforesaid sections of the country.

When the preamble to the Constitution of the so-called Republic of the Philippines declared that the Filipino people "do hereby proclaim their independence", and when section 2 of Article I of said instrument stipulated that "The Republic of the Philippines shall exercise sovereignty (underscoring supplied) over all the national territory * * *", and when Japan proclaimed to the world that she had given the Philippines its independence, the Government of the United States and the exile Commonwealth Government in Washington were placed face to face with vital questions of government—who was the sovereign in the Philippines then? Had an independent and sovereign government really been established in said Islands? Did any form of government at all exist therein, and if so, what form? Their determination of these political questions was not long in coming. The first government, through President Roosevelt, on October 23, 1943, nine days after the inauguration of the said "Republic of the Philippines", made one of his most memorable pronouncements about the activities of the enemy here in the form of his message to the Filipino people of that date (U. S. Naval War College International Law Documents, 1943, pp. 93-94) ; the writer's dissent in the *Co Kim Cham* case (75 Phil., 199, 203), from which the following is quoted:

" 'I wish to make it clear that neither the former collaborationist "Philippine Executive Commission" nor the present "Philippine Republic" has the recognition or sympathy of the Government of the United States.' "

In the course of that message, in fact in the very first sentence thereof, he branded the said "Republic" as "a puppet government". President Roosevelt thus expressed the attitude of his government towards those regimes which the Japanese had forced upon the Filipino people by a language of unmistakable meaning. Not only did he refuse, as the head of the United States government, and as the highest officer of the political department thereof, to recognize the said "Republic" as a government of any kind, but he categorically declared that it was nothing more than "a puppet government". It goes without saying that a puppet government is no government at all, not even a de facto government, for the simple reason that while a puppet government has no power nor authority of its own, a de facto government has certain recognized powers and authority belonging to it while it lasts.

Before June 29, 1944, President Quezon, exercising his powers and prerogatives as President of the Commonwealth of the Philippines then in exile in Washington, together with other Filipino leaders who were at the time in said exile government, requested of the Senate and House of Representatives of the Congress of the United States the introduction of what later became a joint resolution of both Houses in the form of S. J. Res. No. 93, which became law on June 29, 1944 (41 Off. Gaz., 3). That joint resolution characterized the government which the Japanese Imperial Forces had thrust upon the Filipino people as the Japanese's "own puppet government which was conceived in intrigue, born in coercion, and reared primarily for the purpose of Japanese selfishness and aggrandizement." (Recto's *Three Years of Enemy Occupation*, p. 14; italics supplied; 41 Off. Gaz., 81.)

When General of the Army Douglas MacArthur was only three days on Philippine soil after his historic landing on Leyte, he issued his already famous proclamation of October 23, 1944 (41 Off. Gaz., 147). In so doing, he was acting in a very distinct sense as the representative of his superior commander, the President of the United States. As already recalled in our several previous dissenting and concurring opinions, General MacArthur, referring to the "Republic of the Philippines", declared not that it was a government but that it was a "so-called government";

not that it had been formed legitimately under the rules and principles of International Law or otherwise, but that it had been established "under enemy duress", and that it was "based upon neither the free expression of the people's will nor the sanction of the government of the United States, and is purporting to exercise executive, judicial, and legislative powers of government over the people" (41 Off. Gaz., 147; italics supplied.)

That it was President Quezon and said other Filipino leaders who requested the introduction of the above cited joint resolution in the Congress of the United States, is a duly recorded fact of the contemporary history of the United States and Commonwealth Governments during the progress of the Pacific War (Three Years in Review, 41 Off. Gaz., 3).

All the foregoing pronouncements and declarations of the highest officials and representatives of the political departments of the United States and Commonwealth governments prove conclusively and beyond cavil that they did not recognize any legality or validity, even only as a de facto government, in the "so-called government" thus imposed upon the Filipinos by sheer brute force and military strength. On the contrary, said pronouncements and declarations are unanimously and emphatically expressive of the strongest condemnation. That determination was binding upon the courts because it decided a question which, being political in nature, was not for the courts to decide. Even conceding that the question of what is a de jure and what is a de facto government is a judicial one, still whether or not one or the other class of government exists in fact in a certain territory at a certain time, is clearly a political question for the exclusive determination of the political departments of the government.

From Wingo's "The Last Days of Manuel Quezon", the following passages have been quoted:

"On February 20 (1943) President Quezon spoke to the people of the Philippines over the radio. * * *

* * * * *

"Warning the Filipino people not to be deluded by the kind of independence Tojo was offering them, Quezon said: 'Assuming that tomorrow Japan was to declare the Philippines an independent nation, what would that mean? It would merely mean that the Philippines would be another "Manchukuo"—a government without rights, without powers, without authority, a government charged only with the duty to obey the dictates of the Japanese rulers.' "

Now, we ask: As events demonstrated, did not the "Republic of the Philippines" fulfill to the last detail the prediction of the great leader? Who would gainsay that said "Republic" was really another Manchukuo, really a government without rights, without powers, without authority, a government charged only with the duty to obey the dictates of the Japanese rulers? Who would have the temerity to say that President Quezon was a bad prophet, that the Japanese did much better than he foretold?

In the case of *Jones vs. U. S.* (137 U. S., 202; 34 Law. ed., 691, 696), the following well-settled principle, theretofore invariably upheld by the United States Supreme Court under a great variety of circumstances, was reiterated:

"Who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects, of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances. (*Gelsten vs. Hoyt*, 16 U.S., 2 Wheat., 246, 324 [4:381; 401]; *United States vs. Palmer*, Id., 610 [471]; *the Divina Pastora*, 17 U.S., 4 Wheat., 52 [4:512]; *Foster vs. Neilson*, 27 U.S., 2 Pet., 253, 307, 309 [7:415; 433, 434]; *Keene vs. M'Donough*, 33 U.S., 8 Pet., 308 [8:955]; *Garcia vs. Lee*, 37 U.S., 12 Pet., 511, 520 [9:1176]; *Williams vs. Suffolk Ins. Co.*, 38 U. S., 13 Pet., 415 [10:226]; *United States vs. Yorba*, 68 U.S., 1 Wall., 412; 423 [17:635; 637]; *United States vs. Lynde*, 78 U.S., 11 Wall., 632, 638 [20:230, 232]. It is equally well settled in England.

The Pelican, Edw. Adm. Appx. D; Taylor vs. Barclay, 2 Sim., 213; Emperor of Austria vs. Day, 3 De G. F. & J., 217, 221, 233; Republic of Peru vs. Peruvian Guano Co., L.R., 36 Ch. Div., 489, 497; Republic of Peru vs. Dreyfus, L.R., 38 Ch. Div., 348, 356, 359." (Italics supplied.)

According to the doctrine just quoted, the first question to be determined by the legislative and executive departments of the government is: Who is the sovereign of the territory? The next is: Is he a de jure or a de facto sovereign? The determination of this second question necessarily decides whether the government of that sovereign is de jure or de facto, for it is not possible to speak of a sovereign, in the instant acceptation of the term, without linking him with his government. And a de jure sovereign cannot have a de facto government, any more than can a de facto sovereign have a de jure government. If the legislative and executive departments, therefore, decide that the sovereign is de jure or de facto, they are at the same time deciding that his government in that territory is de jure or de facto. For the spectacle can not be countenanced where the legislative and executive departments decide whether the sovereign is de jure or de facto, while the judicial department decides whether his government is de jure or de facto, thus giving rise to the possibility that while the former two departments, or either of them, decide that the sovereign is de jure, the judicial decides that his government is de facto, and vice versa.

Differently expressed, the proposition would be: If the question of who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political question, that of whether the government in the territory is de jure or de facto, cannot but be a political question.

Indeed, whether a government, de jure or de facto, exists at all in a territory, entitled to recognition by another government under International Law, is in the very nature of things a political question addressed to the proper political officers of the latter government. For instance, the Department of State, as the immediate representative of the President of the United States, was the one which dealt with the question of the recognition or non-recognition of the so-called government of Manchukuo. That question was never addressed to, nor considered as within the province of, the United States Supreme Court. Secretary Stimson consistently refused to recognize it because he maintained that it was a mere puppet government. No other governmental department, including the judiciary, had any say in the matter. In fact, they considered themselves bound by the action of the political department. Now, Manchukuo and the "Republic of the Philippines" were creatures, exactly alike, of the same "creator"; and there is no gainsaying the fact that the "Republic of the Philippines" was no less a puppet than Manchukuo.

In *Philipps vs. Payne* (2 Otto. [U. S.], 130; 23 Law. ed., 649), the Supreme Court of the United States expressly acknowledged that "in cases involving the action of the political departments of the government, the judiciary is bound by such action." (*Williams vs. Insurance Co.*, 13 Pet., 420; *Garcia vs. Lee*, 12 Pet., 511; *Kennel vs. Chambers*, 14 How., 38; *Foster vs. Neilson*, 2 Pet., 309; *Nabod of Carnatio vs. East Ind. Co.*, Ves. Jr., 60; *Lucer vs. Barbon*, 7 How., 1; *R. I. vs. Mass.*, 12 Pet., 714.)" And in *Nelly vs. Henkel* ([1] 180 U. S., 126; 45 Law. ed., 448), the same court again abided by the determination of a similar question by the legislative and executive branches of the government thus:

"* * * it thus appears that both the legislative and executive branches of the government concurred in not recognizing the existence of any such government as the Republic of Cuba * * *."

Presidents Roosevelt and Quezon, the United States Congress and General MacArthur all concurred in not recognizing the existence of any such government as the "Republic of the Philippines".

This vital point now demands our consideration: Did the political departments (legislative and executive) of the United States and the Commonwealth Governments determine the political question of whether the "Philippine

Executive Commission" or the "Republic of the Philippines" was a de facto government? From the facts above narrated, it is clear that they have, and that their determination was unequivocally in the negative. If President Roosevelt had considered the regime imposed upon this country by the Japanese occupation army as a de facto government, within the meaning of International Law, he would not have branded the "Philippine Executive Commission" and the "Philippine Republic" as a "puppet government", and, since he must be presumed to know that a de facto government in international law is a form of government, with powers and duties of its own, as contradistinguished from a mere "puppet", and that such a government is entitled to recognition among civilized nations, he would never have so vehemently announced in his message to the Filipino people on October 23, 1943, that neither the one nor the other had the recognition or the sympathy of the government of the United States—he would not have condemned them.

If President Quezon and the other Filipino leaders with him in the exile Commonwealth government had considered the "Philippine Executive Commission" or the "Republic of the Philippines" as such a de facto government, it is obvious that they would never have requested of the Senate and House of Representatives of the Congress of the United States the introduction of what later became S. J. Res. No. 93, which became law on June 29, 1944, wherein the government thus imposed upon the Filipinos by the Japanese Imperial Forces was described as the Japanese's "own puppet government which was conceived in intrigue, born in coercion, and reared primarily for the purpose of Japanese selfishness and aggrandizement." Before suggesting the introduction of that joint resolution, that is, in his radio speech to the people of the Philippines of February 20, 1943, above partly quoted, President Quezon, in predicting that the independence that Tojo was then offering to the Filipinos would be another Manchukuo—a government without rights, without powers, without authority, a government charged only with the duty to obey the dictates of the Japanese rulers—could not have possibly had in mind a de facto government as this term is understood in International Law.

In the same way, the Senate and House of Representatives of the United States Congress, in adopting the aforesaid joint resolution, concurred in the attitude of both Presidents Roosevelt and Quezon towards both the "Philippine Executive Commission" and the "Republic of the Philippines."

And lastly, had General MacArthur, as the representative of President Roosevelt, considered the "Republic of the Philippines" as a genuine de facto government, he would not have condemned it as he has in so severe and explicit terms, in his proclamation of October 23, 1944, wherein he does not confer upon it the honor of even the name "government", simply referring to it as a "so-called government."

By their uncompromising attitude of condemnation towards those Japanese-imposed regimes, the executive and legislative departments of the United States and the Commonwealth governments clearly did not recognize the existence here of a de facto government in the form either of the "Philippine Executive Commission" or the "Republic of the Philippines." Those political departments of both governments were the ones vested with the exclusive power to decide that political question (*Jones vs. U. S.*, supra, and cases therein cited), and their decision "binds the judges" (*Philippis vs. Payne*, supra, and cases therein cited). The recognition or non-recognition of the existence here of such a de facto government was a matter pertaining to the foreign relations of the United States and the Commonwealth. And it is a truism that a nation is represented in its foreign relations, in peace as well as in war, by the political departments of its government, and not by the courts. The regimes imposed here by Japan during World War II, of course, pertained to the wartime relations between the United States and the Commonwealth, on the one hand, and Japan, on the other. And it should be recalled that under the ordinance appended to the Commonwealth Constitution then in force (sec. 1 [10]), Philippine foreign affairs were under the direct supervision and control of the United States.

In considering the attitude of the United States and Commonwealth governments towards the "Philippine

Executive Commission" and the "Republic of the Philippines," we must not lose sight of the fact that the Commonwealth Government, headed by President Quezon, maintained throughout the war that, having gone into exile beyond the reach of the Japanese invaders, it never ceased to exist and to function, despite the military occupation of certain parts of the territory of the Philippines by the Japanese Imperial Forces. And in this stand the Commonwealth Government was solidly backed not only by the United States but by all the other United Nations. (Three Years in Review, 41 Off. Gaz., 3.)

"The Commonwealth Government was firmly convinced that mere military occupation of a territory does not confer sovereign rights on the invading army and that its legal status, therefore, under international law would not be changed so long as it maintained its nucleus aboard through its head, President Manuel L. Quezon and his cabinet, and by means of the emergency powers given him by the National Assembly. This view was sustained by the United States and the other 42 members of the international group known as the United Nations, which officially recognized the Philippine Constitutional Government thus established in Washington, D. C." (Ibid., 3; italics supplied.)

We need not reiterate here the views and arguments set forth in support of our stand against the opinion of the majority in our dissenting and concurring opinions in the following cases: *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113, 371) (both as to the main decision and to the resolution on the motion for reconsideration); in *Peralta vs. Director of Prisons* (75 Phil., 285); in *People vs. Jose* (75 Phil., 612); in *Alcantara vs. Director of Prisons* (75 Phil., 494); and in *De Castro vs. Court of Appeals* (75 Phil., 824).

In the hypothesis that the "Philippine Executive Commission" or the "Republic of the Philippines" was not a de facto government, we are confident that the majority would agree that the judicial proceedings had in the courts of said regimes were null and void. But it is not merely a hypothesis—it has been finally and definitely so determined by the political departments of the United States and the Commonwealth governments.

And may we be allowed now to express the hope that this Court will see its way clear to realizing that in laying down the doctrine in the *Co Kim Cham* case it has unwittingly refused to be bound by the aforesaid prior and adverse determination of the political departments of the United States and the Commonwealth governments; that it will abide by that determination, recognizing that the question at issue was a political, not a judicial one, within the province of the political departments, to the exclusion of the judicial, just as we would expect those departments to abide by our decisions on judicial matters; and that thereby an end may be put to the unfortunate and unseemly conflict, thus restoring the equilibrium of governmental powers which has been disturbed by the error into which we sincerely, but respectfully, believe the court to have been betrayed when it involuntarily went out of its province and entered another—to the end that the people may be accordingly governed and guided upon a question so vitally affecting their national and private lives.

As to the concern shown, while plausibly, for the interests of the litigants who voluntarily submitted their controversies to the adjudication of the Japanese-sponsored tribunals, we do not believe that the problem is absolutely without solution. Of course, as to the immediate parties who thus voluntarily submitted their contentious cases for settlement by said agencies of the occupation regimes, we encounter no special difficulty in opining that the situation could be likened to the case of parties voluntarily submitting their controversies to arbitration, and the decisions therein rendered likened to arbitration awards in their effects. Nothing could be further from our minds by this statement than to cast any sort of reflection upon the learning and ability of the officers, judicial and others, concerned—we simply base our assertion upon what to us is a case of clear lack of legal authority for those Japanese-created tribunals to exercise judicial functions with like effects as tribunals acting by authority of their lawful government, or even as genuine de facto courts.

In regards to criminal cases, where violations of the Commonwealth laws have been committed, altho the

judgments of those courts would, we submit, also be void, where the accused have already served or suffered any penalty thereunder, such penalty can be easily taken into account in the judgments of the lawful courts, in which new complaints or informations may be filed, by recommending full pardon or pro tanto commutation of penalty by the Chief Executive.

DISIDENTE

BRIONES, M.:

No estoy conforme con la resolucio[n] de la mayoria; mi opinion es que la solicitud de certiorari esta bien fundada y, por tan to, debe concederse. A mi juicio, el presente caso encaja perfectamente dentro de las apreciaciones y conclusiones de mi disidencia en el asunto basico de Co Kim Cham contra Valdez Tan Keh y Dizon. Dije entonces, en parte, lo que sigue y lo reafirmo en esta disidencia, a saber:

"Al interpretar la proclama del General MacArthur de 23 de Octubre de 1944 que anula todas las actuaciones del gobierno establecido en estas islas bajo la ocupacion militar japonesa, creo que la inteleccion mas apropiada es que, como regla general, esa proclama anula todo, incluso las actuaciones judiciales (judicial processes), sobre todo aquellas cuya entidad y cuyos efectos rebasan el periodo de la esclavitud forzosa y trascienden y repercuten en la postliberacion. En otras palabras, la nulidad, la ineficacia debe ser la regla general; y la validez, la eficacia la excepcion, la salvedad.

"La razon de esto es sencilla. El gobierno de ocupacion representaba en nuestra vida un parentesis anomalo, de obligada ilegitimidad, y es nada mas que natural que el gobierno legitimo, de jure, al restaurarse, no transigiese con los actos y procesos de aquel gobierno, excepto en lo que fuera absolutamente necesario e irremediable. Caerian, por ejemplo, bajo esta excepcion solamente aquellos actos y procesos resultantes del hecho de que formabamos una comunidad civilizada con necesidades e intereses individuales y sociales complejos; y de que por instinto de conservacion y para vivir con cierto orden y relativa tranquilidad y no precipitarnos en la anarquia y en el caos habiamos menester la egida de un gobierno, sin importar que este no fuese hechura de nuestra voluntad y que inclusive nos fuera repulsivo. Mas alla del minimum de esta forzosidad, no puede haber transaccion con los actos y procesos de aquel regimen.

"Como corolario de esta inteleccion es obvio que por mucho que nos tienten y atraigan ciertas doctrinas y principios conocidos de derecho internacional sobre gobiernos de facto, no es conveniente y es hasta peligroso sentar reglas absolutas que a lo mejor no cuadran con las circunstancias peculiares de cada caso. Lo mas seguro es enjuiciar por sus propios meritos cada acto o proceso que se plantee.

"En la determinacion judicial de esta clase de asuntos nunca se deben perder de vista, entre otras, las siguientes circunstancias: (1) que la invasion japonesa, aun en el apogeo de su fuerza, jamas pudo quebrantar la lealtad fundamental del pueblo filipino a su gobierno y al gobierno de los Estados Unidos de America; (2) que en casi todas partes de Filipinas esta lealtad hizo posible la articulacion y organizacion soterranea de fuerzas de resistencia contra el enemigo; (3) que si bien el control japonés era por lo general efectivo en las ciudades y grandes poblaciones, era, sin embargo, precario en muchos pueblos y barrios, sobre todo en aquellos que no tenian valor estrategico o eran poco propicios a la confiscacion y rapiña, dominando practicamente en dichos sitios las guerrillas; (4) que en algunas regiones el gobierno del Commonwealth seguia funcionando, trasladandose de un sitio a otro para burlar la persecucion del enemigo o acuartelandose en zonas a donde no alcanzaba la accion de las guarniciones japonesas; (5) que muchos habitantes de los llanos y poblados se sustrajeron a la jurisdiccion del gobierno de fuerza predominante (paramount force), refugiandose en las montañas y lugares dominados por las guerrillas y colocandose bajo la proteccion y salvaguardia de estas, o bien en sitios donde no habia ni japoneses ni guerrillas; (6) y por ultimo, que despues del desembarco del General MacArthur y de sus fuerzas libertadoras en Leyte el 20 de Octubre de 1944, la lealtad filipina y el

espíritu de resistencia llegaron a su máxima tensión y la ocupación japonesa se fue desmoronando rápidamente a pedazos hasta sufrir finalmente un colapso total." (75 Phil., 403, 404.)

De autos resulta, sin eficaz contradicción, que los peticionarios son vecinos de la provincia de Tayabas y se refugiaron en las montañas durante la ocupación enemiga para no someterse a la autoridad de los japoneses y del gobierno establecido por estos en el Archipiélago. También consta en autos que su abogado, "obrando bajo instrucciones específicas", presentó una excepción o protesta formal contra la decisión del Tribunal de Apelaciones, reservándose el derecho de impugnar la validez de dicha decisión para después de la emancipación y reconquista. ¿Que mejor prueba de que los recurrentes no se sometieron a la jurisdicción del llamado gobierno de facto establecido por los japoneses en Manila y en tales otras partes donde tuvieron control efectivo, y de que, por tanto, no pueden alcanzarles ni afectarles adversamente las consecuencias jurídicas resultantes de dicho gobierno de facto? Que los recurrentes lograron evadir con éxito los tentáculos del gobierno de fuerza, lo demuestra el hecho de que se refugiaron en las montañas a donde ya no pudo alcanzar ni extenderse el dominio militar de los japoneses.

Por lo expuesto, los recurrentes tienen derecho a que se considere de nuevo su apelación.

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