

LORENZON Y. COLOSO, PETITIONER AND APPELLEE, VS. FRANCISCO ALTEA, RESPONDENT AND APPELLANT.

G.R. No. L-545. September 25, 1946

Ponente: BENGZON, J.

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BENGZON, J.:

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The case. About the end of last year, the parties herein disputed, before the court of Cotabato, the right to act as fiscal of the province. Petitioner Lorenzon Y. Coloso claimed under an appointment dated October 8, 1945 by the Secretary of Justice. Respondent Francisco Altea exhibited two successive appointments by the United States military authorities, the last of which had been issued on June 12, 1945.

After hearing both sides, the Honorable Anatalio C. Mañalac, Judge, found for the petitioner, and ordered his opponent to surrender the office with all its records and equipment.

- The facts. On January 9, 1945, respondent Francisco Altea was "temporarily appointed acting provincial fiscal for the Province of Cotabato" by the Director of Civil Affairs, Province of Cotabato, Tenth Military District, the appointment to be "valid for the duration of the present emergency, unless sooner revoked by proper authority." (exhibit 3.) He qualified and acted as such. Upon assumption by the X Corps of command over the area, he was again designated on June 12, 1945, temporary fiscal, to "serve until removed by authority of appropriate commander or superseded by acting or permanent officials appointed by the Commonwealth Government." The designation read:

HEADQUARTERS X CORPS

"OFFICE OF THE COMMANDING GENERAL

"APO 310

"12 June 1945

"Subject: Appointment of Temporary Officials

"To: See Distribution

"1. The following named persons are hereby designated as temporary officials of the Province of Cotabato, Cotabato, Mindanao, Philippine Islands, effective 9 June 1945, pursuant to the provisions of paragraph 4, USAFFE Circular No. 7, Civil Administration and relief of the Philippines, dated January 1945.

* * * * *

"Provincial Board

JOSE GUERRERO

BLAS SINSUAT

"Assistant Treasurer

QUERICO MOYA

"Fiscal

FRANCISCO ALTEA

* * * * *

"2. All temporary appointees will serve until removed by authority of appropriate commanders or superseded by acting or permanent officials appointed by the Commonwealth Government.

* * * * *

"By command of Major General Sibert.

(Sgd.) "MM. A CRAIG

"Major AGD, Asst. Adg. Gen."

By virtue of this designation respondent again took the oath of office on June 22, 1945, and continued performing the functions thereof.

It is admitted that on August 9, 1945, the commanding officer of the Tenth Military District issued a proclamation "revoking all proclamations, circulars, bulletins or orders by this Head quarters or lower units, pertaining to the civil government, civil affairs, and civilians effective 10 August 1945." and there seems to be no question that the X Corps was subordinate to the Tenth Military District which compromised Cotabato Province.

On October 8, 1945, the Secretary of Justice issued to petitioner an appointment worded as follows:

"In the interest of the public service and pursuant to the provisions of section 1679 of the Administrative Code, as amended, you are hereby appointed Acting Provincial Fiscal of Cotabato, effective upon assumption of office."

In virtue of the above appointment, petitioner requested respondent on October 22, 1945 to turn over the office to him; but the latter refused to quit, explaining, however, that should he be disqualified or unable to perform the duties of the provincial fiscal in any particular cases, then such cases will be endorsed to petitioner.

C. Discussion. Upon consideration of the above undisputed materials facts, we find two valid reasons why respondent and appellant must yield:

First. His designation of June 12, 1945, expressly stipulated that he will serve until "an acting or permanent fiscal is appointed by the Commonwealth Government." As the petitioner is undoubtedly an acting provincial fiscal appointed by the Commonwealth, respondent is now duty bound to vacate, under the very terms of his designation.

In this connection, respondent advances the proposition that only the President of the Commonwealth has the power to choose his successor. He is partly right, and partly wrong. Only the President has the power to appoint

the "permanent" provincial fiscal; but the Secretary of Justice may appoint an "acting" provincial fiscal in accordance with the last sentence of section 1679 of the Revised Administrative Code, as amended.

Second. Respondent's designation was contained in a military order of June 12, 1945, which the subsequent proclamation of August 9, 1945, completely abrogated and rendered ineffective. Furthermore, by the announcement of General MacArthur of August 22, 1945, the United States Army authorities ceased to have any participation in the civil administration of the Philippines since September 1, 1945. (41 Off. Gaz., 494.)

Therefore, beginning August 9, 1945, or at the latest September 1, 1945, the authority given to respondent by the United States military authorities automatically lapsed. And as he received no appointment either from the Secretary of Justice or the President (the only persons empowered to appoint provincial fiscals under our Commonwealth, now the Republic), the office of Cotabato's fiscal was, in legal contemplation, vacant; and the Secretary of Justice had lawful authority to appoint petitioner as the acting fiscal thereof, pursuant to section 1679 of the Administrative Code, as amended, which for convenience, is hereinbelow quoted:

"When a provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail, to discharge any of the duties of his position, the Secretary of Justice shall appoint an acting provincial fiscal, who shall discharge all the duties of the regular provincial fiscal which the latter shall fail or be unable to perform. * * * This may also be done in case of vacancy, pending the appointment of a permanent fiscal." (Italics ours.)

It is apparent from the above provision that the Secretary of Justice appoint an acting provincial fiscal: (a) when the incumbent is disqualified to act in a particular case or for any reason is unable or fails to discharge the duties of his position; and (b) when the position is vacant, pending the appointment of a permanent fiscal.

Petitioner's appointment was not issued upon the first contingency, for it mentioned no particular instance or instances wherein the incumbent was disqualified or unable to act. Hence it is evident, the appointment was made upon the second.

However, the respondent argues that, when Coloso's appointment was signed and delivered, the post was not vacant, because he respondent was then actually performing the duties of prosecuting officer. So far as we have been informed, this court has not passed upon this question, and this somehow justifies the appeal interposed by respondent. Yet American decisions have solved the point.

"As observed above, the word 'vacancy' when applied to public offices is not employed in a technical sense. It does not mean that the office is necessarily physically vacant. It may be vacant when it is occupied by one who is not a de jure officer, as by a mere usurper, or by one who is holding over. But although no corporal vacancy in the office exists in such a case, nevertheless there is a vacancy in the sense that the appointing or electing power may proceed to fill the office by choosing a successor." (42 American Jurisprudence, 977, 978.)

In *State ex rel. Eberle vs. Clark* (87 Conn., 537; 89 Atl., 172), a similar situation arose. We quote from the court's opinion:

"In support of the claim that no vacancy existed, it is said that, although the respondent was not a de jure officer, it was his duty to remain in possession of the office after his fixed term has expired, until a duly qualified officer appeared, and that the provision of the city charter which has been referred to, and the resolution of appointment passed in conformity to it, conferred upon him at least the color of title, so that his possession of the office was that of a de facto officer at least; and it is claimed that an office is not vacant when in possession of a de facto incumbent. The word 'vacant' or 'vacancy,' as applied to an office, is not to be taken in a strict technical sense in every case. In the eyes of the law an office is vacant when it is not held by a de jure incumbent. It may be thus vacant when it is occupied by one who is not a de jure officer, as by a mere usurper. We think that the word 'vacancies' is used in this sense in the statute in question, not as indicating that

the office is physically vacant, but that it is not occupied by a de jure officer. It provides that the governor may fill any vacancy, however occurring. The plain purpose of the statute is to have every office supplied with a de jure officer, and applies as well to an office occupied by a usurper, as a hold-over or de facto officer, as to cases in which by death or resignation the office is left without any incumbent." (52 L.R.A., New Series, 915.)

It may be remarked, passim, that herein is no declaration that the acts performed by the respondent after August 9 or September 1, 1945, are of no effect. There is such a thing as officer de facto. Perhaps this explains why he was compensated for services after that date. Yet it is unnecessary to delve into this presently. The only issue is petitioner's title to the office, which, as above stated, is undeniable.

Moran, C. J., Paras, Feria, Pablo, Perfecto, Hilado, Briones, Padilla, and Tuason, JJ., concur.

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