

CO KIM CHAM (ALIAS CO CHAM), PETITIONER, VS. EUSEBIO VALDEZ TAN KEH AND ARSENIO P. DIZON, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENTS.

G.R. No. L-5 [1]. November 16, 1945

Ponente: FERIA, J.

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FERIA, J.:

RESOLUTION ON MOTION FOR RECONSIDERATION

This is a motion for reconsideration of our decision rendered in this case filed by the respondent. Two attorneys at law, who were allowed to appear as *amici curiæ*, have also presented memoranda to discuss certain points on which the dissenting opinions rely.

(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 Wainwright, 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 re-established and the occupant fails promptly to suppress such rebellion or guerrilla operations." (Id., p. 365.)

But supposing *arguendo* that there were provinces or districts in these Islands not actually and effectively

occupied by the invader, or in which the latter, consequently, had not substituted his own authority for that of the invaded government, and the Commonwealth Government had continued publicly exercising its authority, there is no question as to the validity of the judicial acts and proceedings of the courts functioning in said territory, under the municipal law, just as there can be no question as to the validity of the judgments and proceedings of the courts continued in the territory occupied by the belligerent occupant, under the law of nations.

(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.

This is the opinion of all writers on international law up to date, among them Wheaton (Vol. II, p. 236) and Oppenheim (Vol. II, p. 338) in their recently revised Treatises on International Law, edited in the year 1944, and the Interpretation of the Supreme Court of the United States in many cases, specially in the case of *Dow vs. Johnson* (106 U. S., 158), in which that Court said: "As a necessary consequence of such occupation and domination, the political relations of its people to their former government are, for the time being, severed. But for their protection and benefit, and the protection and benefit of others not in the military service, or, in other words, in order that the ordinary pursuits and business of society may not be unnecessarily deranged, the municipal laws, that is, such as affect private rights of persons and property and provide for the punishment of crime, are generally allowed to continue in force, and to be administered by the ordinary tribunals as they were administered before the occupation. They are considered as continuing, unless suspended or superseded by the occupying belligerent." (*Dow vs. Johnson*, 100 U. S., 158; 25 U. S. [Law, ed.], 632).

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.

(3) We held in our decision that the word "processes" as used in the proclamation of General Douglas MacArthur of October 23, 1944, cannot be interpreted to mean judicial processes; and because of the cogent reasons therein set forth, we did not deem it necessary to specify the processes to which said proclamation should be construed to refer. As some doubt still lingers in the minds of persons interested in sustaining a contrary interpretation or construction, we are now constrained to say that that term as used in the proclamation should be construed to mean legislative and constitutional processes, by virtue of the maxim "*noscitur a sociis*." According to this maxim, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its

meaning may be made clear and specific by considering the company in which it is found. (Black on Interpretation of Laws, 2d ed., pp. 194-196.) Since the proclamation provides that "all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void," the word "processes" must be interpreted or construed to refer to the Executive Orders of the Chairman of the Philippine Executive Commission, Ordinances promulgated by the President of the so-called Republic of the Philippines, and the Constitution itself of said Republic, and others that are of the same class as the laws and regulations with which the word "processes" is associated.

To illustrate, "an English act required licenses for 'houses, rooms, shops, or buildings, kept open for public refreshment, resort, and entertainment.' It was adjudged that the word 'entertainment' in this connection, did not necessarily mean a concert, dramatic performance, or other divertimento, nor did it necessarily imply the furnishing of food or drink, but that, judged from its associations, it meant the reception and accommodation of the public. So where a policy of marine insurance is specified to protect the assured against 'arrests, restraints, and detentions of all kings, princes, and people,' the word 'people' means the ruling or governing power of the country, this signification being impressed upon it by its association with the words 'kings' and 'princes.' Again, in a statute relating to imprisonment for debt, which speaks of debtors who shall be charged with 'fraud' or undue preference to one creditor to the prejudice of another,' the word 'undue' means fraudulent. A statute of bankruptcy, declaring that any fraudulent 'gift, transfer or delivery' of property shall constitute an act of bankruptcy, applies only to such deliveries as are in the nature of a gift—such as change the ownership of the property, to the prejudice of creditors; it does not include a delivery to a bailee for safekeeping." (Black on Interpretation of Laws, *supra*.)

(4) The statement of Wheaton (International Law, 7th ed., p. 245) that "when it is said that an occupier's acts are valid, it must be remembered that no crucial instances exist to show that if his acts should all be reversed (by the restored government or its representatives) no international wrong would be committed," evidently does not mean that the restored government or its representatives may reverse the judicial acts and proceedings of the courts during the belligerent occupation without violating the law of nations and doing any wrong at all. A violation of the law of nations does not always and necessarily cause an international wrong. As the said judicial acts which apply the municipal laws, that is, such as affect private rights of persons and property and provide for the punishment of crimes, are good and valid even after occupation has ceased, although it is true that no crucial instances exist to show that, were they reversed or invalidated by the restored or legitimate government, international wrong would be committed, it is nonetheless true and evident that by such abrogation national wrong would be caused to the inhabitants or citizens of the legitimate government. According to the law of nations and Wheaton himself, said judicial acts are legal and valid before and after the occupation has ceased and the legitimate government has been restored. As there are vested rights which have been acquired by the parties by virtue of such judgments, the restored government or its representative cannot reverse or abrogate them without causing wrong or injury to the interested parties, because such reversal would deprive them of their properties without due process of law.

In this connection, it may not be amiss to refer to the decision of the Supreme Court of the United States' in the case of *Raymond vs. Thomas* (91 U. S., 712), quoted in our decision as applicable by analogy. In said case, the Commander in Chief of the United States forces in South Carolina, after the end of the Civil War and while the territory was still under Military Government, issued a special order annulling a decree rendered by a court of chancery in a case within its jurisdiction, on the wrong assumption that he had authority to do so under the acts of Congress approved March 2, and July 19, 1867, which defined his powers and duties. That Supreme Court declared void the said special order on the ground "that it was an arbitrary stretch of authority needful to no good end that can be imagined. Whether Congress could have conferred power to do such an act is a question we are not called upon to consider. It is an unbending rule of law that the exercise of military power where the rights of

the citizen are concerned, shall never be pushed beyond what the exigency requires."

(5) It is argued with insistence that the courts of the Commonwealth continued in the Philippines by the belligerent occupant became also courts of Japan, and their judgments and proceedings being acts of foreign courts cannot now be considered valid and continued by the courts of the Commonwealth Government after the restoration of the latter. As we have already stated in our decision the fundamental reasons why said courts, while functioning during the Japanese regime, could not be considered as courts of Japan, it is sufficient now to invite attention to the decision of the Supreme Court of the United States in the case of *The Admittance, Jecker vs. Montgomery* (13 How., 498; 14 Law. ed., 240), which we did not deem necessary to quote in our decision, in which it was held that "the courts, established or sanctioned in Mexico during the war by the commanders of the American forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer thought proper to interfere. They were not courts of the United States, and had no right to adjudicate upon a question of prize or no prize." (*The Admittance, Jecker vs. Montgomery*, 13 How., 498; 14 Law. ed., 240.)

(6) The petition for mandamus in the present case is the plain, speedy and adequate remedy. The mandamus applied for is not to compel the respondent judge to order the reconstitution of the record of the case, because the record had already been reconstituted by order of the court. It is sought to compel the respondent judge to continue the proceedings in said case. As the judge refused to act on the ground that he had no power or jurisdiction to continue taking cognizance of the case, mandamus and not appeal is the plain, speedy and adequate remedy. For it is a well established rule that "if a court has erroneously decided some question of law or of practice, presented as a preliminary objection, and upon such erroneous construction has refused to go into the merits of the case, mandamus will lie to compel it to proceed." (*High on Extraordinary Legal Remedies*, section 151; *Castro Revilla vs. Garduno*, 53 Phil., 934.)

In view of the foregoing, the motion for reconsideration filed by the respondents is denied. The petition for oral argument on said motion for reconsideration, based on the resolution of division of this Court dated July 3, 1945, amendatory of section 2, Rule 54, of the Rules of Court, is also denied, since said resolution has not yet been adopted by this Court in banc, and the respondents and amici curias were allowed to file, and they filed, their arguments in writing.

Moran, C. J., Ozaata, Paras, Jaranilla, De Joya, and Pablo, JJ., concur.

[1] For principal decision, see page 113, ante.

BENGZON, J., concurring:

I subscribe to the majority view, because it follows the trend of American juridical thought on the legal consequences of liberation from enemy conquest; and because General MacArthur's proclamation annulling all laws, regulations and "processes" other than those of the Commonwealth did not include judicial proceedings.

In ordinary parlance, process means, "Act of proceeding; procedure; progress"; "something that occurs in a series of actions or events"; "any phenomenon which shows a continuous change in time." [1]

In court language, process, of course, refers to the means whereby a court compels the appearance of a defendant before it or a compliance with its demands, and may include in its largest sense, all proceedings of the court, from

the beginning to the end of a suit.[2]

Here we have, not a judicial statement, but a military proclamation of the great American liberator whose intent may be gleaned from his utterances and writings. Speaking at the inauguration of President Quezon, December 31, 1941, he called the occasion "symbolical of democratic processes." [3] Announcing the discontinuance of United States Army's participation in Philippine affairs, he referred to "Government by constitutional process" and Government under "constitutional process." In the very proclamation of October 23, 1944, he promised to restore to the people "the sacred right of Government by constitutional process." Therefore, the word "processes" in that proclamation referred to orders or instructions, establishing governmental changes or practices—directives that may not fall strictly within the category of laws or regulations. I am fortified in this conclusion by the auxiliary rules of interpretation, *noscitur a sociis* and *eiusdem generis*.

Furthermore, General MacArthur could not have forgotten the classic Army tradition that, upon military occupation, usually the "legislative, executive or administrative" functions of the enemy Government are affected—not the judicial.[4]

Unconvincing is the argument that no judicial act is touched by Judge Dizon's order. The summons requiring the defendant to answer was a positive court action or proceeding.

Untenable is the position that petitioner should be restricted to his remedy by appeal. Considering the numerous persons and cases affected, and the pressing importance of the issue, the Court may rightly entertain a petition for extraordinary legal remedy [5]

[1] Webster's New International Dictionary, Second Edition.

[2] *Neal-Millar C. vs. Owens* (42 S. E., 266; 267; 115 Ga., 959); *Rich vs. Trimble* ([V.V.J, 2 Tyler, 349, 350).

[3] 841 Off. Gaz., 156.

[4] Lieber's Instructions for the Government of Armies of the United States in the Field (section 1, paragraph 6), quoted in *The Law of Civil Government under Military Occupation*, Magoon's Reports, p. 14.

[5] *Yu Cong Eng vs. Trinidad* (47 Phil., 385).

PERFECTO, J., dissenting:

We are of opinion that the motion for reconsideration should be granted, and the petition denied.

We believe that the majority opinion in this case should be revoked and not be given effect:

1. Because it ignores one of the specific provisions of the October Proclamation issued by General Douglas MacArthur;
2. Because it sets aside completely the true meaning and significance of the words "all processes," as nullified in said proclamation;
3. Because it attributes to General MacArthur an intention which is precisely the opposite of the one expressly manifested in the proclamation;
4. Because it wrongly surmises what General MacArthur could not have intended, on the false assumption that judicial processes during the Japanese regime are valid in accordance with international law;

5. Because it gives judicial processes under the Japanese regime such character of sacredness and untouchability that they cannot be nullified by the legitimate government;
6. Because it gives the judicial processes under the Japanese regime, although taken under the authority of an enemy, greater sanctity than those of a legitimate occupant or of a government de jure, which are always subject to nullification, in the discretion of the legitimate government;
7. Because it gives judicial processes under the Japanese regime greater force and validity than final decisions rendered by courts of the individual states of the United States of America, which cannot be enforced in our country without the institution of an action before our tribunals;
8. Because it exempts the parties in the judicial processes, under the Japanese regime, from the obligation of paying the necessary judicial fees to the Government of the Commonwealth, granting them a discriminatory privilege in violation of the "equal protection of the laws" clause of the Philippine Constitution;
9. Because it flagrantly violates the policy specifically delineated in the declaration of President Roosevelt regarding the Vargas "Executive Commission" and the Laurel "Philippine Republic;"
10. Because it validates foreign judicial processes taken when the Commonwealth Government was already reestablished in Philippine territory;
11. Because it ignores the fact that the judicial processes in question were taken under a foreign authority with an ideology which is the opposite of that underlying the Philippine legal and constitutional systems and repugnant to the judicial sense of our people;
12. Because it encourages, in some way, the defiant attitude adopted by plaintiff Co Kim Cham against the Commonwealth Government which has been reestablished in Philippine territory by filing the complaint before a court, under the Japanese regime, almost one month after the Commonwealth Government began functioning in Leyte with the absolute certainty that its authority will soon be extended throughout the Philippines;
13. Because it creates problems that might lead to either injustice or inconsistency on the part of this Court, such as the deposit of P12,500 made by plaintiff Co Kim Cham in "micky mouse" money, which is one of the processes validated in the majority opinion;
14. Because it subjects the legitimate government to greater restrictions than those imposed by international law upon a belligerent invader, notwithstanding the fact that The Hague Convention restrictions are only applied to the invader, and not to the restored legitimate government, there being absolutely no reason why international law should meddle with the domestic affairs of a legitimate government restored in her own territory;
15. Because there is absolutely no reason why an invader may revoke the official acts of the ousted legitimate government, a right specifically recognized in the majority opinion, but the legitimate government, once restored, is bound to respect such official acts of the defeated invader, as judicial processes, which is the same as granting outlaws greater privileges than those granted to law-abiding citizens.

On October 20, 1944, with the landing in Leyte of the armed forces of liberation, the Commonwealth Government under President Sergio Osmeña was reestablished in Philippine territory.

On October 23, 1944, General Douglas MacArthur issued his October Proclamation, nullifying all processes of any government other than the Commonwealth Government. Said proclamation was issued in keeping with the spirit and purposes of the following declaration of President Franklin Delano Roosevelt:

"On the fourteenth of this month, a puppet government was set up in the Philippine Islands with Jose P. Laurel,

formerly a justice of the Philippine Supreme Court, as 'president.' Jorge Vargas formerly a member of the Philippine Commonwealth Cabinet and Benigno Aquino, also formerly a member of that cabinet, were closely associated with Laurel in this movement. The first act of the new puppet regime was to sign a military alliance with Japan. The second act was a hypocritical appeal for American sympathy which was made in fraud and deceit, and was designed to confuse and mislead the Filipino people.

"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 * * *.

"Our sympathy goes not to those who remain loyal to the United States and the Commonwealth—the great majority of the Filipino people who have not been deceived by the promises of the enemy * * *

"October 23, 1943

"FRANKLIN DELANO ROOSEVELT

"President of the United States"

(From U. S. Naval War College, International Law Documents. 1943, pp. 93-94.)

Plaintiff Co and her attorneys must have been fully aware of the above-mentioned facts when on November 18, 1944, she filed the complaint in this case, and deposited in court the amount of P12,500.

The fact of the landing in Leyte was officially announced by the Japanese radio, by the papers published in Manila, all Japanese controlled, and by all agencies of Japanese propaganda, although with a few days' delay and with the usual distortion of real facts.

As to the real facts, it must be presumed that plaintiff and her attorneys obtained the same information generally circulated from underground sources—Filipino, Chinese, Spanish, Swedish, Swiss, Czechs, etc.—who were keeping short wave radio sets, and were circulating surreptitious sheets containing the latest war news, including developments in Leyte.

Although the Japanese kempei were becoming harsher, it is also a fact that in the second half of November, 1944, the Japanese forces in Manila were considerably weakened and reduced, being deployed in great number in two opposite directions, north and south, and people were bolder in obtaining and propagating the real war news.

Among these were the victorious occupation of Leyte and Samar in October, 1944, and the crushing defeat suffered in said month by the bulk of the Japanese Navy in two greatest naval battles recorded in history, and the reestablishment of the Commonwealth Government including several measures adopted by the same.

Among the underground means of propaganda was the circulation of the mimeographed paper *The Liberator*, containing almost full accounts of political and war developments in Europe and in the Pacific.

When plaintiff filed her complaint in this case, she was fully aware that she was running the risk that her action and efforts in court might become useless or futile, besides the imminent reestablishment of the Commonwealth authority in Manila.

We may add that plaintiff, in fact, defied the authority of the Commonwealth Government reestablished in Philippine territory, when she filed said complaint about one month after said government was reestablished.

It is true that the Japanese were still controlling Manila then. But it is not less true that their control was precarious and everybody, including the Japanese themselves, was awaiting the arrival at any time of the American forces in Manila. The Japanese had already dug trenches in many places in Manila, built gun emplacements, and constructed, specially in the south side of the Pasig River, very visible military installations

and other preparations to give battle within the City streets against the Fil-American forces. Everybody saw how the Japanese airplanes were reduced to a negligible minimum and how the American bombers, encountering no opposition, except from anti-aircrafts, ranged at will over all Japanese military installations in and around Manila and in the waterfronts of the City. In Manila, no aerial dogfights were seen after the first two days of bombing on September 21 and 22, 1944. After then, the Japanese fliers chose, as a wiser policy, to disappear completely from the Manila sky whenever American planes began to show up, to return one or two hours after the American planes had ended their mission.

Under these circumstances the position of plaintiff seems to become precarious and indefensible by her attitude of defiance to the Commonwealth, Government, which was certain to be reestablished also in Manila, with the same sureness that a falling stone will follow the universal law of gravitation as stated by Isaac Newton.

In the present case plaintiff Co seeks to recover from defendant Eusebio Valdez Tan Keh the undivided half of a property located in Manila described in Torrens title under Transfer Certificate No. 64610 of the Register of Deeds of the City.

From the facts alleged in the complaint, as a condition precedent to the recovery of said undivided half, plaintiff had to return to defendant the amount of P12,500. As defendant refused to accept said amount, upon filing the complaint, plaintiff deposited in court said amount. It does not appear clearly what money was deposited. No doubt it must be of the kind commonly known as "mickey mouse" money, as, the complaint was filed in the latter part of November, 1944. (President Osmeña and General MacArthur were already in Philippine territory with the Armed Forces of Liberation.)

If the proceedings had in the case until the record of the same was burned are to be validated, it is evident that plaintiff must be credited with having made a valid deposit in court in the amount of P12,500.

In case decision is rendered as prayed for in the complaint, and the undivided half of the property in question is adjudicated to the plaintiff, no one shall deny, as a matter of elemental justice, that defendant is entitled to receive the full amount of f 12,500, which must be returned to him as a condition in order that he may relinquish his title to the property in favor of the plaintiff.

Now the problem facing us is how to determine the way in which defendant will recover the amount of P12,500. The amount was deposited in the court of that brazen political fraud inflicted upon our people, the Laurel Philippine Republic. But where is that court today? If the money could be located and disposed of, is it not absolutely worthless?

The decision will be rendered by the courts of the Commonwealth Government the Court of First Instance of Manila, in the first place, and, in case, of appeal, this Supreme Court, as a tribunal of last resort.

The decision necessarily will include a pronouncement as to how defendant will get the money. To make that pronouncement the Court of First Instance of Manila and this Supreme Court, undoubtedly, will be placed in a quandary.

Indeed we do not see how the money deposited in the court under the Japanese regime can be turned over to defendant.

The validation of the proceedings in question starts from the fiction that Commonwealth courts are continuations of the courts which functioned under enemy occupation and authority, including the Court of First Instance which functioned under the Vargas Philippine Executive Commission and, later, the Laurel Philippine Republic, in which the complaint of this case has been filed. To follow this fiction to its natural consequences, the present

Court of First Instance of Manila must be the one who ought to turn over the money to the defendant. Can it do it? Can it give a money which is not in its possession but in the possession of the defunct Court of First Instance under the Japanese regime?

As the Commonwealth courts have no money to turn over to the defendant, from whom and from where shall it get the money? This, is a question that has never been answered, and we are afraid that it cannot be given any satisfactory answer.

As the defendant is entitled to his money, and the money must be paid by the plaintiff, it sterns that plaintiff is the one who must find a way to give the money to defendant. But plaintiff may justly claim that 'she had done what was legally expected from her when after offering the amount to defendant and the same refused to accept the money, she deposited it in court.

She cannot be compelled to disburse another P12,500 to be given to the defendant. If the Court of First Instance of Manila, in the decision it may render, should order her to pay P12,500 to the defendant,, without taking into consideration what she has deposited, in court in November, 1944, she may invoke the decision of this Supreme Court validating the proceedings, including therein the deposit of P12,500. If the deposit is valid, plaintiff is relieved from further obligations and in such case, how shall justice be rendered to defendant?

Our courts must not fall in the inconsistency of validating all the proceedings taken until the record of the case has been destroyed, and to except from said validation the deposit made by the plaintiff. If the deposit is valid, the courts must not allow such validation to be a simple mockery, and offensive farce without any other meaning than to make the administration of justice an object of laughter.

It is evident from the foregoing that the validation of the proceedings in question, in utter disregard of the October Proclamation issued by General MacArthur and of the Declaration of President Franklin D. Roosevelt, leads to an absurd situation from which our courts cannot escape and which will entangle them in a maze of problems incompatible with the administration of justice.

The validation of the processes in the case in question, including the deposit of P12,500, will place our courts of justice in the same predicament as the judge in the "Merchant of Venice," the Shakespearean masterpiece. The validity of the deposit made by plaintiff Co Kim Cham she is entitled, like Shylock, to her pound of flesh; which can be denied her only through a judicial tricky the only way open to apparently avoid inconsistency.

In the preface to his work entitled "The Struggle for Law," the great jurist Jhering, expresses the following opinion as to the legal issue presented by the English dramatic genius:

"One word more on a point which has been contested even by those with whom I otherwise agree. I refer to my claim that injustice wag done to Shylock.

"I have not contended that the judge should have recognized Shylock bond to be valid; but that, once he had recognized its validity he should not, subsequently, have invalidated it by base cunning. The judge had the choice of deciding the bond valid or invalid. He should have declared it to be the latter, but he declared it, to be the former. Shakespeare represents the matter as if this decision was the only possible one; no one in Venice doubted the validity of the bond; Antonio's friends, Antonio himself, the court, all were agreed that the bond gave the Jew a legal right. And confiding in his right thus universally acknowledged, Shylock calls for the aid of 'the court, and the 'wise Daniel,' after he had vainly endeavored to induce the revenge-thirsty creditor to surrender his right, recognized it. And now, after the judge's decision has been given after all doubt as to the legal right of the Jew has been removed by the judge himself, and not a word can be said against it; after the whole assembly, the doge included, have accommodated themselves to the inevitable decree of the law—now that the victor, entirely sure of his case, intends to do what the judgment of the court authorized him to do, the

same judge who had solemnly recognized his rights, renders those rights nugatory by an objection, a stratagem so contemptible that it is worthy of no serious attention. Is there any flesh without blood? The judge who accorded Shylock the right to cut a pound of flesh out of Antonio's body accorded him, at the same time, the right to Antonio's blood, without which flesh cannot be. Both refused to the Jew. He must take the flesh without the blood, and cut out only an exact pound of flesh, no more and no less. Do I say too much when I assert that here the Jew is cheated' out of his legal right? True, it is done in the interest of humanity, but does chicanery cease to be chicanery because practised in the name of humanity?"

We vote for granting the motion for reconsideration to avoid placing our courts of justice in the predicament depicted in the Shylock case.

The next question we are about to discuss, concerning a procedural, incident in this case, is most unusual. So far, we were concerned only with questions of right of parties coming to us for redress, and we have striven to champion the cause of those parties who, we believe, are deprived of their rights, victims of oppression, or denied justice. The problem confronting us now is essentially of internal character. Although it also affects the litigants in this case, it also transcends into the very official functions of this, very Court.

What really is under test is the ability or capacity of this Court to administer justice. The question affects the rights and constitutional prerogatives of the individual members of the Tribunal in relation to the performance of their official duties.

Is a member of this Court entitled to hear the parties and their attorneys on a question pending before us before exercising his constitutional duty to vote on said question? May a majority deprive any member of the opportunity of being apprised of all the facts and all the arguments, written or oral, that the parties and their attorney may present in a case submitted to our consideration?

In the present case, a motion for reconsideration was filed by the respondent, in which it is prayed that said motion for reconsideration be set for hearing, invoking the resolution adopted by this Court on July 3, 1945, and in view of the special fact that there are two new members of this Court who did not have the opportunity of hearing the parties when this case was originally argued, or of participating when it was decided.

One of the new members proposed, seconded by two other members, that said hearing on the motion for reconsideration be set, alleging that he wants to have an opportunity of hearing the parties or their attorneys before voting on said motion.

A majority resolved to deny the motion. We dissented from such action, and this opinion explains why we had to dissent.

The motion was made by one of the members of this Court, prompted not only by the desire to give the respondent ample opportunity to argue upon his motion for reconsideration and to give the movant a change of hearing oral arguments upon the vital questions raised in this case, but by the idea of granting the petition of the respondent in accordance with the resolution unanimously adopted by the Supreme Court on July 3, 1945, which reads as follows:

"The Supreme Court, upon motion of Justice Perfecto, unanimously resolved to adopt the policy of granting litigants or their attorneys the most ample and fullest opportunity of presenting and arguing their cases, by permitting them to present, after oral arguments, memoranda within reasonable time, to argue in open court motions of reconsideration, and, in general, by liberalizing in the discretion of the Court the application of the rules, to insure, in the interest of justice, the most complete and free discussion of every question properly submitted." (41 Off. Gaz., No. 4, p. 284.)

It must be remembered that this resolution was adopted simultaneously with another proposed by Mr. Justice De

Joya for the purpose of definitely stopping a practice which was not in keeping with the highest ethical standards of the law profession, or with the dignity of the Supreme Court. Said resolution reads as follows:

"The Supreme Court, upon motion of Justice De Joya, unanimously resolved, as one of the means of maintaining the highest ethical standard of the legal profession, not to permit private discussion by lawyers of their cases with individual Justices." (41 Off. Gaz., No. 4, p. 284.)

We were fully aware that the real cause of the practice sought to be stopped by the De Joya Resolution was the desire of litigants and their attorneys to have important (motions, such as motions for reconsideration, properly considered before they are acted upon.

In all courts other than the Supreme Court, the parties and their attorneys are always given the opportunity of arguing before the tribunals, or the corresponding judges, all their motions and their petitions, without distinction as to their importance or lack of importance.

But in the Supreme Court no such opportunity was granted in the past. All motions were acted upon without hearing and without granting the litigants or their attorneys the opportunity of properly discussing by oral argument the questions raised in said motions, although said questions are of great importance and of decisive nature, such as motions for new trial, rehearing, or reconsideration.

The fact that the resolutions upon said motions usually are not accompanied by any reason to support the action taken, although in many instances the motions raised important questions and in their preparation the lawyers employed weeks or months of painstaking research, study, thinking, and many sleepless nights, in order to present, in the best possible manner, the questions raised, gave rise to the suspicion, founded or unfounded, generally entertained by the members of the bar, that the members of the Supreme Court did not care to read even said motions. The suspicion was even stronger with respect to the almost invariable denial, expressed in one or two words, of motions for reconsiderations. From mere suspicion to a strong belief only one step is lacking.

To meet this unsatisfactory situation, resourceful litigants and attorneys decided to have private conversations with individual members of the Court to argue their motions without, naturally, giving the opposing parties the necessary opportunity to be heard therein.

The fact that some motions for reconsideration, although very few, were granted in cases where said private conversations took place, could not dispel the suspicion. Years ago, we came to the conclusion that the only way of stopping the practice is to eliminate the causes, that is, to eliminate the unjustifiable restrictions which deprived parties and attorneys of all the opportunities to fully present their cases and argue their motions.

The practice of not allowing an attorney to argue orally and to submit, at the same time, a written memorandum was a cause of much dissatisfaction among the members of the bar; and it was also one of the causes which induced some of them to seek private conversations with members of the Supreme Court.

Convinced that these procedural restrictions are unreasonable as they serve only to restrict the opportunities by which this Court may be completely apprised of the questions of fact and of law submitted to their decision, we were of opinion that it is high time for the Supreme Court to do away with them.

That is the reason why we proposed the resolution which was unanimously adopted by the Supreme Court, incorporating amendments proposed by Mr. Justice Feria and Mr. Justice De Joya, and which we very willingly accepted.

This is the first time when a party in a litigation is seeking the opportunity to argue orally upon his motion for reconsideration according to the terms of the resolution.

We do not see any reason why the Supreme Court shall betray the faith of that party by ignoring a resolution unanimously adopted by the same Court.

One of the members thereof, invoking his official privilege, in the performance of his constitutional duties to be duly apprised of the questions raised in the motion for reconsideration, proposed that he be given an opportunity to hear the parties in an oral argument. We do not understand why his proposition should be turned down, as it was, and why he should be denied the opportunity he needs for the proper performance of his constitutional duties.

In a legislative chamber composed of members belonging to opposing political parties, in the heated debates to vie for popular favor, the majority party have sometimes denied improperly some prerogatives to members of the minority party, but it is unheard of that a majority party ever denied any minority member a right essential to the proper performance of his official functions, such as the right to have proper information upon any question to be voted upon, the right to hear witnesses and arguments, the right to read memoranda, the right to ask questions to any other member of the chamber and to the chair, and to interrogate any person who might enlighten him as to matters under consideration of the chamber.

The Supreme Court is not a political body composed of members divided for partisan considerations. No one here is personally, politically, or economically interested in the result of any case. It is really inconceivable how a majority in this Court could trample upon the rights and privileges of a fellow member. It is more inconceivable if we take into account the fact that we consider ourselves as brethren, and by tradition we are calling ourselves as such.

We can understand that amour propre may induce judges not to entertain with sympathy motions for reconsideration, as one of the natural weaknesses of humankind is to resent that others should point out one's real or fancied mistakes. But when we assumed our position in the highest tribunal of the land, the only governmental institution on which our fundamental code bestowed the appellation "supreme," where we attained the uppermost position of honor to which a lawyer can aspire, we are supposed to have left that weakness behind, and all questions on matters which are official in nature submitted to us shall be viewed with absolute personal detachment, with the only aim of doing justice to all and anyone of the eighteen million inhabitants of this country that might come to us, without asking anything for ourselves, but giving all of ourselves to help our people attain their mission in the centuries and millennia to come.

We know that the publication of the resolution in question was received by members of the bar with a sigh of relief. They could not fail to welcome a procedural innovation which will do away with one of the headaches in the practice of the profession of law; how to argue in person a motion for reconsideration, and such other motions of decisive importance in the cases they are handling. We who had endured the same headaches sympathize with and share the disappointment that the action of the majority will inflict upon law practitioners. Such unhappiness cannot allow us to be happy. Happiness, to be true, must be shared with others. Unshared happiness is deceitful tinsel.

When the resolution was adopted by unanimous vote, we felt elated by the thought that the cause of the administration of justice had advanced another step in the thorny way of procedural progress. We believed that the liberal spirit embodied in the resolution accomplished another triumph against outworn practices, without better claim for survival than the fact that they are mouldy appendices of an old routine, which is a strong appeal to those who would not lift a finger to find out if there are better things than those of which we are used to, to look in the realms of law and ideas for happier worlds to discover and conquer, to see if new pages of the book of science will offer hitherto unknown marvels for an improved service to human necessities, because they do not happen to

feel the natural urge towards perfection, which is a permanent force in mankind.

Our satisfaction did not last long. The resolution lived a paper life in the minutes of the Supreme Court and in the pages of the Official Gazette, giving for almost four months new hopes to the members of the bar, hopes which ; alas !, did not come true. The liberal spirit which we felt triumphant, suffered a crushing defeat, overwhelmed by the forces of reaction, bent on clinging to the mistakes of the past. The liberal innovation was decreed decapitated, to give way to the revival of an absurd judicial practice, wholly unreasonable and unsatisfactory, and not the best suited for a more effective administration of justice by the highest tribunal of our country.

In this hour of sorrow at the running back of the clock of judicial progress, it is our hope that the last setback is not definite for all time. Someday the forces of progress will rally and again march forward, singing the blissful hymn of a new dawn. Setbacks are frequent in the trials and errors of democracy. But in the long run, reason will reign supreme. The slippery earthen feet of the idols of error shall be exposed and will cause them to crumble into a crash from which there is no possible redemption. What is good, is good; what is bad, is bad. We firmly believe that, for the proper performance of its official functions, for the most efficient fulfilment of its judicial duties, the Supreme Court should never curtail the opportunity of the parties and their lawyers to present and argue fully, in writing and by oral argument, all questions properly submitted to our consideration. It is the only way of reducing to the possible minimum our chances of rendering erroneous decisions. If we are not fully apprised of all information, evidence, and arguments that litigants and their attorneys might present and offer to present within the proper time, we are likely to overlook facts and ideas that might give the necessary clue to the correct solution of the factual or legal problems raised in the cases and which will determine whether we are doing justice or injustice.

Painstakingly searching and inquisitive in fact-finding, benedictine patience in trying to understand the respective positions of contending parties, and thoroughness in judicial investigation and in proving and testing legal propositions and theories in the medical laboratory of analysis and inquiry, are the prices of real and substantial justice. The prices are high, but justice is a treasure worth paying all the prices men can offer. Her value is so high that no price is enough to insure its attainment. It even merits, not only the best prices, but the noblest sacrifices. It is after all, one of the fundamental purposes of society. It is one of the dazzling gems with which human character is studied. No efforts must be spared to reach the goal where the golden wreaths and jewelled garlands of human aspirations lay.

HILADO, J., dissenting:

I am constrained to dissent from the resolution of the majority denying the motion for reconsideration filed by the respondents in this case. There will be no need of restating here all the arguments set forth in my dissent against the original majority opinion herein, as well as those which have been expressed in my concurring opinion in G. R. No. L-49, *Peralta vs. Director of Prisons*, p. 355, ante. However, in reiterating these arguments, by reference, in support of the present dissent, I feel in duty bound to reinforce them by some additional considerations in view of the resolution of the majority.

In the first place, the-resolution of the majority says:

"We held in our decision that the word 'processes,' as used in the proclamation of General Douglas MacArthur of October 23, 1944, cannot be interpreted to mean judicial processes; and because of the cogent reasons therein set forth, we did not deem it necessary to specify the processes to which said proclamation should be construed to refer. As some doubt still lingers in the minds of persons interested in sustaining a contrary interpretation or construction, we are now constrained to say that that term as used in the proclamation should

be construed to mean legislative and constitutional processes, by virtue of the maxim 'noscitur a sociis.' According to this maxim, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its meaning may be made clear and specific by considering the company in which it is found. (Black on Interpretation of Laws, 2d ed., pp. 194-196.) Since the proclamation provides that 'all laws' regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void,' the word 'processes' must be interpreted or construed to refer to the Executive Orders of the Chairman of the Philippine Executive Commission, Ordinances promulgated by the President of the so-called Republic of the Philippines, and the Constitution itself of said Republic, and other that are of the same class as the laws and regulations with which the word 'processes' is associated," (Pp. 5, 6.)

Here we have a frank admission that "the Constitution itself of said Republic" is among the "processes" declared null and void by the proclamation issued on October 23, 1944, by General of the Army Douglas MacArthur. Now, the courts of that "Republic" were organized and functioned under and by virtue of said Constitution, particularly under Article IV thereof. Section 4 of said Article provides that the members of the Supreme Court shall be appointed by the President with the advice of the Cabinet, and all judges of inferior courts shall be appointed by the President with the advice of the Supreme Court. Consequently, those courts, commencing with the Supreme Court down to the lowest justice of the peace or municipal court, had to be organized anew, for their constitution under said Article IV was to be different from that of the Commonwealth courts under Article VIII of the Commonwealth Constitution. And, of course, the courts, which has thus been created under the Constitution of the "Republic," could not derive their powers, authority or jurisdiction, if any, except from the same Constitution, and any pertinent legislation enacted pursuant thereto. But if, as admitted by the majority, that Constitution was null and void under General of the Army MacArthurs' aforesaid proclamation, no legal power, authority or jurisdiction could have been conferred by virtue thereof upon the said courts and, as a consequence, the so-called Court of First Instance of Manila wherein the proceedings in question were had could not validly exercise such power, authority or jurisdiction. As a corollary, all of said proceedings must of necessity be null and void.

When the record of the case was burned during the battle for the liberation of Manila, the only proceedings which had been had in civil case No. 3012 of the Japanese-sponsored Court of First Instance of Manila were: (1) the complaint Annex X of the petition for mandamus, dated November 17, 1944; (2) the notification Annex X-1 dated November 20, 1944; (3) the motion to dismiss Annex X-2, dated November 28, 1944; (4) the urgent motion for time to file opposition Annex X-3, dated December 14, 1944; and (5) the opposition to motion to dismiss Annex X-4, dated December 21, 1944. The case had not been heard yet; consequently, there had been no decision disposing thereof.

At that stage of the proceedings, the record was destroyed, and shortly thereafter, upon the liberation of the city, it became legally and physically impossible for that Japanese-sponsored court to continue functioning. The very Constitution under which it had been organized was admittedly declared null and void by the Commander in Chief of the liberation army in his aforesaid proclamation. As we believe having demonstrated in our dissenting opinion when this case was decided, that declaration of nullity was retroactive to the very inception of the laws, regulations and processes condemned thereby—that these were null and void ab initio. But, making another concession to the contrary view, let us suppose that under the aforesaid proclamation the Constitution of the "Republic" became null and void only upon the liberation of Manila in so far as this area was concerned. Under the same hypothesis, the Japanese-sponsored Court of First Instance of Manila created by authority of that instrument, and all its pending unfinished proceedings also became null and void upon the date of that liberation. When the Court of First Instance of Manila was re-established under the Commonwealth Constitution and laws, it had absolutely nothing to do with either the defunct and so-called Court of First Instance of Manila under the "Republic" nor its "proceedings" which were, besides, nothing but a name without substance in the eyes of the law. And yet the majority would by mandamus compel the reestablished the Court of First Instance of Manila to

continue said legally non-existent proceedings to final judgment. This could not be done without considering those proceedings valid despite the nullity of the court in which they were had due to the admitted nullity of the Constitution of the "Republic of the Philippines" under which said court was created, and without making the Commonwealth of the Philippines respect pro tanto the said "Republic," which was the creature of the very representatives of the Japanese Empire who are currently being tried as War Criminals.

In the second place, the said resolution contains the following paragraphs:

"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 re-establish 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 invaders, 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." (Pp. 3, 4.)

The trouble with the case of Japan in the Philippines is that, in establishing here the puppet regimes of the Philippine Executive Commission and the so-called Republic of the Philippines, she did not undertake to fulfill any duty as provided by the Hague Conventions in order to reestablish and insure public order and safety, etc. "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." Her sole purpose, as conclusively shown by her previous, contemporaneous, and subsequent acts in the Philippines, was to make of those puppet organization mere instrumentalities for the further prosecution of her war aims. The strict control and supervision which were constantly retained and exercised by the Japanese Army over, first the Philippine Executive Commission and, later, the so-called Republic, under the circumstances prevailing during the entire period of their existence, show to my mind that they were created merely to serve as such instrumentalities. A strong corroboration of this conclusion is found in the declaration of Mr. Jose P. Laurel, President of that "Republic," when Japan surrendered, that by the acceptance by Japan of the terms of the Potsdam Declaration the said "Republic" ceased to exist: this could only mean that said "Republic" was inseparably linked with Japan's war effort—if it had been intended only as a provisional government set up by the occupation army, it would have been considered by Mr. Laurel as terminated upon the liberation of the Philippines which happened before Japan's surrender. Any semblance of incidental benefit which to some eyes might have appeared to accrue therefrom to a more or less insignificant portion of our population, was not more than incidental or nominal. It should not be allowed to blindfold our eyes to the real and deceitful aim of the enemy. This is the same deceit to which President Roosevelt referred in his message dated October 23, 1943, cited in my main dissenting opinion.

If, fundamentally, the Japanese-sponsored Court of First Instance of Manila lacked all power and jurisdiction over the said civil case No. 3012, no amount of benefit to any particular litigants who might have resorted to it, which may be said to arise from the proceedings of that court, could confer upon it such power and jurisdiction. This is so self-evident as to render demonstration unnecessary.

I, therefore, vote for the granting of the motion for reconsideration.

BRIONES, M., disidente:

Siento tener que disentir de la resolución de la mayoría. Opino que el pedimento de reconsideración debe concederse y en consecuencia denegarse el mandamus solicitado por el recurrente.

Al interpretar la proclama del General MacArthur de 23 de October de 1944 que anula todas las actuaciones del gobierno establecido en estas islas bajo la ocupación militar japonesa, creo que la interpretación más 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 período de la esclavitud forzosa y trascienden y repercuten en la postliberación. En otras palabras, la nulidad, la ineficacia debe ser la regla general; y validez, la eficacia la excepción, la salvedad.

La razón de esto es sencilla. El gobierno de ocupación representaba en nuestra vida un paréntesis anómalo, de obligado ilegitimidad, y es nada más que natural que el gobierno legítimo, de jure, al restaurarse, no transigiese con los actos y procesos de aquel gobierno, excepto en lo que fuera absolutamente necesario e irremediable. Caerían, por ejemplo, bajo esta excepción solamente aquellos actos y procesos resultantes del hecho de que formábamos una comunidad civilizada con necesidades e intereses individuales y sociales complejos; y de que por instinto de conservación y para vivir con cierto orden y relativa tranquilidad y no precipitarnos en la anarquía y en el caos habíamos menester la égida de un gobierno, sin importar que este no fuese hechura de nuestra voluntad y que inclusive no fuera repulsivo. Más allá del minimum de esta forzosidad, no puede haber transacción con los actos y procesos de aquel régimen.

Como corolario de esta interpretación es obvio que por mucho que nos tienten y atraigan ciertas doctrinas y principios concidos 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 más seguro es enjuiciar por sus propios méritos cada acto o proceso que se plantee.

En la determinación judicial de esta clase de asuntos nunca se deben perder de vista, entre otras, las siguientes circunstancias: (1) que la invasión japonesa, aun en el apogeo de su fuerza, jamás pudo quebrantar la lealtad fundamental del pueblo filipino a su gobierno y al gobierno de los Estados Unidos de América; (2) que en casi todas partes de Filipinas esta lealtad hizo posible la articulación y organización soterránea 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 tenían valor estratégico o eran poco propicios a la confiscación y rapiña, dominando prácticamente en dichos sitios las guerrillas; (4) que en algunas regiones el gobierno del Commonwealth seguía funcionando, trasladándose de un sitio a otro para burlar la persecución del enemigo al acuartelándose en zonas a donde no alcanzaba la acción de las guarniciones japonesas; (5) que muchos habitantes de los llanos y poblados se sustrajeron a la jurisdicción del gobierno de fuerza predominante (paramount force), refugiándose en las montañas y lugares dominados por las guerrillas y colocándose bajo la protección y salvaguardia de éstas, o bien en sitios donde no había ni japoneses ni guerrillas; (6) y por último, que después 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.

Examinemos ahora el caso que nos ocupa. ¿Hay razones para catalogarlo excepcionalmente en la categoría de aquellos actos o procesos judiciales que, bajo la interpretación ya antedicha, merecen que se les dé vida y efectividad aun después de fenecido el régimen de ilegitimidad bajo el cual se iniciaron y tramitaron? Creo que no. Veamos por qué.

De autos resulta que el expediente cuya reconstitución se pide formóse mediante demanda incoada ante el Juzgado de Primera Instancia de Manila el 17 de Noviembre de 1944, es decir, cuando ya las fuerzas libertadoras del General MacArthur estaban fuertemente asentadas en Leyte y el Gobierno del Commonwealth nrmemente restablecido en suelo filipino. El asunto versaba sobre derechos relacionados con propiedad inmueble y el estado de su tramitación no pasó de la etapa de las alegaciones hasta que ocurrió el devastador incendio de Manila causado por los japoneses después de la entrada de los Americanos en esta ciudad el 3 de Febrero de este año, 1945. Los records del Juzgado se quemaron con motivo de dicho incendio, entre ellos el expediente de autos. Después de la restauración de los tribimales, la parte demandante pidió la reconstitución del expediente por medio de copias de los escritos presentados. La parte demandada se opuso: primero, porque se trataba de un asunto incoado bajo la ocupación japonesa y, por tanto, quedaba automaticamente anulado, después de la liberación de Manila, bajo los terminos de la proclama del General MacArthur de que se ha hecho mención; segundo, porque no se podía confiar en la autenticidad de las copias proporcionadas por la parte demandante. El Juzgado estimó la opisicion por el fundamento de la invalidez y porque, a falta de una ley expresa del Commonwealth al efecto, no se consideraba autorizado para ordenar la reconstitución del expediente y asumir jurisdiction sobre el mismo. De ahí la interposition del presente recurso de mandamus para compeler al Juzgado a ordenar la reconstitución del expediente y a seguir conociendo del mismo.

Aunque es verdad que la Ciudad de Manila no estaba aun liberada cuando se presento la demanda de autos, con todo opino que el Juzgado no erro ni abuso de su discrecion al negarse a dar validez a lo tramitado bajo la ocupacion japonesa con motivo de dicha demanda y a reconstituir el expedients a tenor de lo dispuesto en la proclama del General MacArthur tantas veces mencionada. Es evidente que no se trata aqui de un proceso judicial comprendido dentro del minimum de forzosidad de que hablo más arriba y cuya validez y eficacia el gobierno legítimo no tendría más remedio que reconocer so pena de causar un dano irreparable a las partes. No había llegado a cristalizar ningún estado juridico definitivo en el asunto, no se había dictado ninguna sentencia, ni siquiera había comenzado a verse. No se pretende que las partes perderían algún derecho vital y sustantivo si no se reconstituyera el expediente quemado, o que no podría reproducirse el litigio ahora ante los tribunales del Commonwealth, en un pleito completamente nuevo y original.

Si esto es así ¿por que, pues, se ha de compeler al gobierno legitimo, al tribunal de jure, a aceptar como validas y, por añadidura, a heredarlas y reconstituirlas, unas actuaciones tramitadas a última hora, de prisa y corriendo, cuando los japoneses ya estaban de retirada y las fuerzas libertadoras del General MacArthur estaban en vísperas de una victoria aplastante y decisiva, máxime porque esas actuaciones no envolvían nada vital ni apremiante en el sentido de que su incoación no pudiera haberse pospuesto para despues de la liberación?

¿Por qué no se ha de dar al gobierno legítimo, al tribunal de jure, cierta latitud en el ejercicio de su discreción al determinar cual debe ser aceptado como válido en los autos y procesos de aquel regimen de fuerza predominante (paramount force) y cual debe ser considerado como nulo e ineficaz? ¿Es acaso que el gobierno legítimo ha de sentirse como paralizado o cohibido al enjuiciar los actos y procesos del gobierno establecido por el invasor?

Y, sobre todo ¿por que al interpretar la proclama del General MacArthur hemos de restringirla demasiado en vez die darle la mayor latitud posible, limitada tan sólo por aquel minimum de forzosidad de que he hablado antes? ¿No es acaso un principio bien establecido de derecho international que si el gobierno legítimo, al restaurarse, puede convalidar ciertos actos o procesos del gobierno de ocupacion, también puede optar por lo contrario y que no hay nada que en buena ley le impida hacerlo en gracia a la majestad de la soberanía legitima? (Wheaton's International Law, pp. 244, 245.)

Existen, además, otras consideraciones fuera de las indicadas. El 17 de Noviembre de 1944 en que se presentó la demanda de autos la situación en Manila ya era muy crítica y alarmante. Los aviones aliados dominaban el aire.

Los Japoneses estaban tratando desesperadamente de fortificar la ciudad. Parecía que iban a defenderse aquí hasta el último cartucho. Las autoridades locales conminaban a la población a que evacuara la ciudad en prevencion de batallas en las calles y de casa en casa. Bajo tales circunstancias es harto dudoso que los tribunals estuvieran funcionando todavía normalmente entonces y que los procesos judiciales fueran tales como debian ser en una situación ordenada y normal. Es evidente que tales procesos, tramitados en condiciones tan anómalas y precarias, no merecen que se les dé validez reconstituyéndolos, tanto más cuanto que las partes nada pierden con su invalidacion, pudiendo, como pueden, someter sus contenciones a los tribunales restablecidos del Commonwealth mediante la incoación de nuevos pleitos. Lo mas que tendrian que hacer sería pagar nuevos derechos de escribanía y de sherifato, pero si protestasen por este nuevo pago, diría entonces que ello seria un buen argumento en contra de la reconstitución.

En vista de todas las circunstancias, se puede afirmar con buen fundamento que la parte demandante, cuando presentó su demanda en Noviembre de 1944, sabía o debía saber que el gobierno del Commonwealth—el de jure—ya estaba firmemente restablecido en suelo filipino, y que el tremendo éxito de unas operaciones militares victoriosas estaba posibilitando rápidamente su pronta restauración en plena capital del archipiélago. Así que por analogía se puede aplicar a este caso lo que en el asunto de *State vs. Carroll* (28 Conn., 449) se declaro, a saber:

"When, therefore, in civil cases, the public or third persons had knowledge that the officer was not an officer de jure, the reason for validating: the acts to which they submitted, or which they invoked, failed, and the law no longer protected them." (Cases on Amer. Admin. Law, 146.)

Es igualmente aplicable por analogía esto que se dijo en el asunto de *State vs. Taylor* (108 N. C., 196) :

"The citizen is justly chargeable with laches, does that which is his own wrong and wrong to the public, when he recognizes, tolerates, encourage and sustains a mere usurper, one whom he knows, or ought, under the circumstances, to know to be such. In such cases, neither justice, necessity nor public policy requires that the acts of the usurper shall be upheld as valid for any purpose. Indeed, these things, the spirit and purpose of government strongly suggest the contrary." (Cases on Amer. Admin. Law, 143.)

Ahora pasaré a tratar de un punto procesal. El mandamus procede cuando hay de por medio un deber ministerial que cumplir y a la parte agraviada no le queda otro remedio expedito y adecuado. ¿Es este el caso que tenemos ante nosotros? Creo que no. El Juzgado tenia perfecta discreción para reconstituir o no el expediente en cuestion porque mientras, por un lado, no se creía autorizado para asumir jurisdiction sobre un asunto heredado de la ocupación japonesa a falta de una ley expresa del Commonwealth que le autorizase para ello, por otro lado con su proceder no privaba a las partes del derecho de plantear sus desavenencias ante los tribunales del gobierno legitimo restablecido, en medio de la presente atmósfera de plena libertad y plena justicia. Pero de todas maneras, aun suponiendo que el Juzgado haya incurrido en error al ejercer su discreción de la manera que ejerció, a la parte agraviada le quedaba un remedio expedito y adecuado: la apelación.

En resumen, mi intelección del asunto que nos ocupa es la siguiente:

- (a) Que la proclama del General Mac Arthur anula, como regla general, todos los actos y procesos legislativos, administrativos y aun judiciales del gobierno de superior fuerza establecido por los japoneses durante la guerra.
- (b) Que esa proclama, sin embargo, deja excepcionalmente un margen para cierto minimum de validez forzosa, minimum impuesto por las exigencias del instinto de conservacion, del orden y de la vida civilizada que teníamos que vivir y conllevar en medio de los riesgos, tribulaciones y horrores bajo la ocupación militar.
- (c) Que el caso que tenemos ante nosotros no cae dentro del radio de ese minimum no solo porque no envolvía para las partes nada urgente ni vitalmente forzoso que hiciese inaplazable su planteamiento ante los tribunales del régimen de ocupación en vísperas de la victoria devisiva de las fuerzas libertadoras y cuando el gobierno de

Commonwealth ya estaba firmemente restablecido en suelo filipino y la situación en Manila era a todas luces anormal, sino porque nada hay que prive a las partes de su derecho de promover el mismo litigio ante los tribunales del Commonwelath mediante la incoación de un expediente nuevo y original.

(d) Y, finalmente, que aun suponiendo que el Juzgado haya incurrido en error, el recurso procedente no es el de mandamus sino la apelación.

Motion of reconsideration and petition for oral argument died.

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