

CIRIACO IBAÑEZ, PETITIONER, VS. HERNANDO HERNANDEZ, JUDGE OF FIRST INSTANCE OF LEYTE, ET AL., RESPONDENTS.*G. R. No. L-313. December 20, 1946*

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ef5eafd450d8/>**FERIA, J.:**

The petitioner was prosecuted in seventeen (17) cases for violation of article 213 of the Revised Penal Code, and in four (4) cases for misappropriation of public funds defined and penalized in article 217 of the same Code.

The Court of First Instance of Leyte, in its sentence dated May 22, 1941, found the petitioner guilty in the said seventeen cases for violation of article 213 of the Penal Code, and four (4) cases for misappropriation of public funds (all of which were tried jointly by agreement of the parties); but convicted him only in three of the aforementioned seventeen cases and in three of the four cases' for misappropriation of public funds, in accordance with article 70 of the Revised Penal Code.

Petitioner appealed to the Court of Appeals, and the latter affirmed with modification the sentence of the lower court. No appeal by certiorari having been taken by the petitioner to this Court, the decision of the Court of Appeals became final after fifteen (15) days from its promulgation, and after the entry of the judgment the case was remanded to the lower court with a certified copy of the judgment or sentence for execution, in accordance with sections 8 and 9 of Rule 53, made applicable to criminal cases by section 17, of Rule 120.

The judgment of the Court of First Instance as affirmed by the Court of Appeals could not be executed, because the defendant had been hiding in the mountains of Leyte according to what the petitioner alleges in his petition.

On June 8, 1915, petitioner filed with the Court of First Instance of Leyte a motion asking the court "to suspend the reading of the decision of the Court of Appeals" on the ground that "all acts of said Court of Appeals, being a creation of the Japanese-sponsored government, are null and void; and that the said Court of First Instance has no jurisdiction to have the aforesaid decision read to the accused in view of the fact that a Court of Appeals duly constituted in accordance with the Constitution of the Philippines and the laws of the Commonwealth, has not yet passed upon the merits of the case on appeal to said court." The provincial fiscal of Leyte filed a well prepared opposition to said motion, and the Court of First Instance of Leyte denied the motion on the strength of the doctrine laid down by this Court in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, (75 Phil., 113).

This case is before this Court by virtue of petition for certiorari, as special civil action, filed by the petitioner under section 1, Rule 67.

The grounds for the petition called "motivos de accion" by the petitioner, are (1) that the petitioner has not been able to attend to his said cases appealed to the Court of Appeals, nor to file a motion for a new trial and to appeal by certiorari to this Court from the Court of Appeals' decision, because he had' been hiding in the mountains in order to preserve his loyalty to the Commonwealth and avoid serving the invader; (2) that the Japanese government had tried to arrest him and made him serve the said sentence; (3) that the latter was set aside by the

judicial authorities of Leyte by virtue of the amnesty granted by the President of the so-called Republic of the Philippines; (4) that the cases against him, having been decided by the Court of Appeals under the Japanese government, had acquired international character and required the application of the International Law; (5) that three of the seventeen cases, and three of the four cases above mentioned refer to the same subject matter, and therefore he was charged with several offenses based on one and the same act, contrary to a circular of the Attorney General issued to provincial fiscals on October, 1941; and (6) that the respondents have issued orders and taken steps to have the decision of the Court of Appeals executed, in excess of their powers and jurisdiction.

All the so-called "causes of action" or grounds in support of the petition are without merit and deserve no serious consideration.

In the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon*, supra, as well as in that of *Alcantara vs. Director of Prisons* (75 Phil., 491), this Court has laid down the doctrine that the judgments and sentences, not of political complexion, of the ordinary courts in these Islands, during the Japanese occupation are good and valid. Therefore the respondent Judge did not act without or in excess of its-jurisdiction in ordering the petitioner to appear in order to serve the sentence complained of which is not of political complexion.

The fact that after submitting, without objection his appeal to the Court of Appeals, the petitioner had absconded himself in the mountains to avoid serving the sentence rather than for the reasons stated or alleged in his petition, and for that reason he was prevented, according to his allegation, from filing a motion for new trial, or an appeal "by certiorari to this Court, did not affect the validity of the said sentence.

Messrs. Justices Hilado and Pericoto quote, as a new ground for their dissent, an excerpt of the decision of the Supreme Court of the United States in the case of *Jones vs. United States* (137 U. S., 202), which says that 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 all other officers, citizens and subjects, of that government." The only conclusion that may be drawn from the said quotation by the dissenters is, that they propounded the new theory that the question whether a government is de facto or de jure involves necessarily that of sovereignty, which, being a political question, is to be determined by the legislative and executive departments of a government, and not by the courts of justice. This theory is clearly erroneous. It is true 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 can not be a government de facto. The three classes of government 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 publicists and decisions of the Supreme Court of the United States, are governments de facto in a territory under the same sovereign de jure, or in which no question is involved as to 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 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 hold in the case of *United States 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* (0 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 *Bairly vs. Hunter* (171 U. S., 888), 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., -116), 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.

In view of the fact that there are only five Justices concurring in this opinion, and after a rehearing the voting remained the same, the petition for certiorari is dismissed in accordance with the provisions of Rule 56 section 2, in relation with Rule 58, section 1, of the Rules of Court. So ordered.

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

DISSENTING

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

We dissent.

In this case the result of the voting failed to obtain a majority. In accordance with the provisions of Rule 56, section 2 in relation with Rule 58, section 1, this case was set for rehearing, but no party appeared when it was called on the day set. Thereafter, the respective opinions of the Justices and the voting remained the same, with the consequences that, pursuant to said section 2, this action, which was originally commenced in this Court, will be dismissed. 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 said determination of the case. The opinion of our said brethren has been written by Mr. Justice Feria in the form of the foregoing decision. Said opinion is predicated upon the doctrine, from which we also dissented, laid down in *Co Kim Cham vs. Valdez Tan-Ken- and Dizon* (75 Phil., 113).

In order that the majority decision, with the dissents, in this case may be promulgated without further delay, we have decided to merely summarize the reasons supporting ours, without prejudice to our registering a more extended dissent in *Etorma vs. Ravelo and Director of Prisons* (78 Phil., 145). Briefly, this dissent is 'based upon: (1) the reasons set forth in my dissent, both from the main decision and from the resolution on the motion for reconsideration, in *Co Kim Cham vs. Valdez Tan Keh and Dizon*, supra; (2) those set forth in my concurring opinion in *Peralta vs. Director of Prisons* (75 Phil., 285); (3) those set forth in my concurring opinion in *People vs. Jose* (75 Phil., 612); (4) those set forth in my dissent in *Alcantara vs. Director of Prisons* (75 Phil., 494); (5) those set forth in my dissenting opinion in *Castro vs. Court of Appeals* (75 Phil., 824); and (6) the doctrine in *Jones vs. United States* (137 U. S., 202; 34 Law. ed., 691, 696), and in the cases therein cited, that:

"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. (*Gelston vs. Hoyt*, 16 U. S., 3 Wheat., 246, 324 [4:381, 401]; *United States es. Palmer, Id.*, 610 [471]; *The Divina Pastora*, 17 U. S., 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*, 8 U. S., 1 Wall., 412, 423 [17:635, 637]; *United States vs. Lynde*, 78 U. S., 11 Wall., 322, 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." (137 U. S., 202, 213; 34 Law.-ed., 696.)

In the case of *Etorma vs. Ravelo and Director of Prisons*, supra, we propose to show the pertinence and applicability of the doctrine in *Jones vs. United States*, supra, and make an extended discussion of the other grounds of our dissent therein.

DISIDENTE

BRIONES, M.:

Disiento de la ponencia por las mismas razones expuestas en mi disidencia registrada en el asunto de *Co Rim Cham contra Yaldez Tan Ken and Dizon* (75 Phil., 371).

Es un hecho no impugnado seriamente que el recurrente se replegó en las montañas de Leyte para huir del gobierno de fuerza predominante o de facto establecido por los japoneses en estas Islas durante la última guerra. Él tenía derecho de hacerlo; no estaba obligado a rendir vasallaje a dicho gobierno. Cuando seremonto todavía le quedaban ciertos recursos para defenderse; y si no pudo utilizarlos fue por dicho remontamiento.

Por tanto, ahora, en la liberación, es nada más que justo el que se le de la oportunidad de agotar tales recursos, permitiéndole proseguir su apelación.

El recurso debe estimarse.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.