

IN THE MATTER OF THE APPLICATION OF ERNEST F. DU FRESNE TO BE ADMITTED TO THE BAR WITHOUT TAKING THE USUAL EXAMINATION.

G.R. No. 1045. November 23, 1911

Ponente: CARSON, J.

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CARSON, J.:

This is a motion for a reconsideration of a former ruling of this court denying an application for a license to practice law in the courts of the Philippine Islands without taking the prescribed examination.

Applicant, relying upon the provisions of section 2 of Act No. 1597, seeks admission to the bar without taking the usual examination claiming that he has "held" the office of assistant prosecuting attorney of the city of Manila by virtue of an appointment as acting assistant prosecuting attorney of the city of Manila, made in his favor under the provisions of section 15 of Act No. 1698.

Section 2 of Act No. 1597 is as follows:

"Paragraph one of section thirteen of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in civil actions and special proceedings in the Philippine Islands,' is hereby amended to read as follows:

"1. Those who have been duly licensed under the laws and orders of the Islands under the sovereignty of Spain or of the United States and are in good and regular standing as members of the bar of the Philippine Islands at the time of the adoption of this code; Provided, That any person who, prior to the passage of this Act, or at any time thereafter, shall have held, under the authority of the United States, the position of justice of the Supreme Court, judge of the Court of First Instance, or judge or associate judge of the Court of Land Registration, of the Philippine Islands, or the position of Attorney-General, Solicitor-General, Assistant Attorney-General, Assistant Attorney in the office of the Attorney-General, prosecuting attorney for the city of Manila, assistant prosecuting attorney for the city of Manila, city attorney of Manila, assistant city attorney of Manila, provincial fiscal, attorney for the Moro Province, or assistant attorney for the Moro Province, may be licensed to practice law in the courts of the Philippine Islands without an examination, upon motion before the Supreme Court and establishing such fact to the satisfaction of said court."

That portion of section 15 of Act No. 1698, by authority of which applicant claims that he was appointed an acting assistant prosecuting attorney of the city of Manila, is as follows:

"In case of a temporary absence or disability of any subordinate officer or employee in any Bureau or Office, the chief of such Bureau or Office may designate any other subordinate officer or employee in his Bureau or Office temporarily to perform the duties of the officer or employee who is thus absent or disabled, and it shall be the duty of the person so designated to perform the duties so assigned to him without additional compensation."

Upon the showing made by the applicant, we do not think that he comes within either the letter or the spirit of the

provisions of section 2 of Act No. 1597, on which he bases his application.

Applicant does not claim that he was appointed to the office of assistant prosecuting attorney of the city of Manila. His claim is that he was appointed an acting assistant prosecuting attorney of the city of Manila; but the privilege conferred in express terms in section 2 of Act No. 1597, upon which he relies, is conferred upon one who has "held" the position of assistant prosecuting attorney of the city of Manila, and makes no express provision touching one who has held the position of an acting assistant prosecuting attorney.

Applicant, however, contends that his appointment as an acting assistant prosecuting attorney for the city of Manila, under the provisions of section 15 of Act No. 1698, was a sufficient authorization to him to hold the office of assistant prosecuting attorney for the city of Manila; and that he did, in fact, hold that office and perform the duties thereof for several months. We do not think that this contention is or can be sustained by the terms of the statute upon which applicant relies.

Without considering whether section 15 of Act No. 1698 contemplates or authorizes the making of appointments in the form in which applicant's appointment was made, that is to say, as an acting assistant prosecuting attorney, it is very clear that whatever form be adopted by the prosecuting attorney for the city of Manila in designating subordinate officers and employees in his office temporarily to perform the duties of an absent or disabled assistant prosecuting attorney, his action, if taken under the authority conferred upon him by section 15 of Act No. 1698, can amount to no more than a mere designation and authorization to such person temporarily to perform the duties of the absent or disabled official, without additional compensation. The language of the statute leaves no room for doubt that a subordinate officer or employee designated temporarily to perform the duties of another, continues to "hold" his own office or employment with all its rights and privileges; and there is nothing in the statute which indicates that it was the intention of the legislator that he is to enjoy, in addition thereto, any of the rights and privileges of the official whose duties he is designated temporarily to perform, except only, of course, such rights and privileges as are necessarily incident to the actual performance of the duties of the absent or disabled official.

But not only does the designation of the applicant temporarily to perform the duties of an assistant prosecuting attorney for the city of Manila fail to bring him within the strict letter of the law authorizing the admission of such officials to the bar without examination; in our opinion it fails also to bring him within the spirit or the intent of the provisions of the above-cited section 2 of Act No. 1597.

Public policy demands that any person seeking admission to the bar in these Islands be required to furnish satisfactory proof of his educational and moral qualifications and of his possession of such a degree of learning and proficiency in the law as may be deemed necessary for the due performance of the duties of a lawyer. The learning and proficiency in the law of an applicant for admission to the bar is usually ascertained by requiring him to submit himself to an examination. But section 2 of Act No. 1597 provides, substantially, that officials who have held certain specified judicial and legal offices in these Islands will be presumed to have the necessary learning and proficiency in the law to entitle them to admission to the bar without examination. Of course, a mere appointment to one of these offices could not impart such learning and proficiency in the law to one who was without it at the time of his appointment, and it is clear that this presumption must rest on the further presumption that before any person is appointed to any of the positions mentioned in the Act, due inquiry is made as to his character and qualifications, and that no person will be appointed to such positions who has not at least such a degree of learning and proficiency in the law as would entitle him to admission to practice in the various courts in these Islands. Appointments to the positions mentioned in Act No. 1597 are made either by the President of the United States by and with the advice and consent of the Senate, or by the Governor-General of the Philippine Islands by and with the advice and consent of the Philippine Commission, and the legislator evidently conceived

that the fact that such an appointment is made is a sufficient guaranty that after due inquiry the appointee has been found to be possessed of at least the necessary qualifications for admission to the bar.

But no such presumption arises as to the qualification of one who is merely designated temporarily to perform the duties of one of the officials mentioned in the Act. Under the provisions of section 15 of Act No. 1698, the Attorney-General of the Islands, the city attorney and the prosecuting attorney for the city of Manila and the attorney for the Moro Province may each designate any subordinate officer or employee in their respective offices temporarily to perform the duties of an absent or disabled assistant attorney. In making such designation for temporary duty, there is no such obligation upon the chiefs of these offices to look well to the qualifications as a lawyer of the employee thus designated, as there is upon the Chief Executive to look well to the qualifications of a regular appointee to such an office; and it is easy to imagine cases where an employee not learned in the law, or at most with some knowledge and experience in a single branch of the law such as criminal practice and procedure, might properly be designated temporarily to perform the duties of an assistant attorney in one or other of those offices, although his permanent appointment to such an office would not be justified by his general attainments as a lawyer. There is no such guaranty that only competent attorneys will be designated by the chiefs of these offices temporarily to perform the duties of absent assistant attorneys under the provisions of section 15 of Act No. 1698, as there is that the President of the United States by and with the advice and consent of the Senate, and the Governor-General of the Philippine Islands by and with the consent of the Commission will appoint none but competent attorneys permanently to occupy the important judicial and legal positions expressly mentioned in section 2 of Act No. 1597.

We do not believe that it was the intention of the legislator to put it in the power of the Attorney-General of the Islands, of the city attorney and the prosecuting attorney for the city of Manila, and of the attorney for the Moro Province arbitrarily, and in the exercise of their unrestrained discretion to confer upon subordinate officers and employees in their offices the right to admission to the bar in these Islands without examination; and we hold that subordinate officers and employees designated temporarily to perform the duties of absent or disabled assistant attorneys do not hold the positions of such absent or disabled assistant attorneys in the sense in which the legislator contemplated the holding of those positions in section 2 of Act No. 1597, in order to give one who has held them the right to admission to practice law in these Islands without taking the prescribed examination.

The application should be, and is, denied.

Arellano, C. J., Torres, Mapa, Johnson, Moreland, and Trent, JJ., concur.

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