

IN RE APPLICATION OF MARIO GUARINA FOR ADMISSION TO THE BAR.

G.R. No. 1179. January 08, 1913

Ponente: CARSON, J.

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CARSON, J.:

Relying upon the provisions of section 2 of Act No. 1597, the applicant in this case seeks admission to the bar, without taking the prescribed examination, on the ground that he holds the office of provincial fiscal for the Province of Batanes.

Section 2 of Act No. 1597, enacted February 28, 1907, is as follows:

"Sec. 2. 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' "

The records of this court disclose that on a former occasion this applicant took, and failed to pass the prescribed examination. The report of the examining board, dated March 23, 1907, shows that he received an average of only 71 per cent in the various branches of legal learning upon which he was examined, thus falling four points short of the required percentage of 75. We would be delinquent in the performance of our duty to the public and to the bar, if, in the face of this affirmative indication of the deficiency of the applicant in the required qualifications of learning in the law at the time when he presented his former application for admission to the bar, we should grant him a license to practice law in the courts of these Islands, without first satisfying ourselves that despite his failure to pass the examination on that occasion, he now "possesses the necessary qualifications of learning and ability."

But it is contended that under the provisions of the above-cited statute the applicant is entitled as of right to be admitted to the bar without taking the prescribed examination "upon motion before the Supreme Court" accompanied by satisfactory proof that he has held and now holds the office of provincial fiscal of the Province of Batanes. It is urged that having in mind the object which the legislator apparently sought to attain in enacting the above-cited amendment to the earlier statute, and in view of the context generally and especially of the fact that

the amendment was inserted as a proviso in that section of the original Act which specifically provides for the admission of certain candidates without examination, the clause "may be licensed to practice law in the courts of the Philippine Islands without an examination" should be construed so as to mean "shall be licensed to practice law in the Philippine Islands without an examination." It is contended that this mandatory construction is imperatively required in order to give effect to the apparent intention of the legislator, and to the candidate's claim de jure to have the power exercised.

It must be confessed that were the inquiry limited strictly to the provisions of local law touching this matter, the contentions of the applicant would have great weight. For it is well settled that in statutory interpretation the word "may" should be read "shall" where such construction is necessary to give effect to the apparent intention of the legislator. In *Rock Island County Supervisors vs. United States* (71 U. S., 435, 446), Mr. Justice Swayne says:

"The conclusion to be deduced from the authorities is that where power is given to public officers, in the language of the Act before us, or in equivalent language, whenever the public interest or individual rights call for its exercise, the language used, though permissive in form, is in fact peremptory. What they are empowered to do for a third person the law requires shall be done. The power is given, not for their benefit, but for his. It is placed with the depositary to meet the demands of right, and to prevent a failure of justice. It is given as a remedy to those entitled to invoke its aid, and who would otherwise be remediless. In all such cases it is held that the intent of the Legislature, which is the test, was not to devolve a mere discretion, but to impose a positive and absolute duty."

Whether the word "may" in a statute is to be construed as mandatory and imposing a duty, or merely as permissive and conferring discretion, is to be determined in each case from the apparent intention of the statute as gathered from the context, as well as from the language of the particular provision. The question in each case is whether, taken as a whole and viewed in the light of surrounding circumstances, it can be said that a purpose existed on the part of the legislator to enact a law mandatory in its character. If it can, then it should be given a mandatory effect; if not, then it should be given its ordinary permissive effect. (*Colby University vs. Village of Canandaigua* (U. S.), 69 Fed., 671, 673; *Kansas Pacific Ry. Co. vs. Reynolds*, 8 Kan., 623, 628; *Kemble vs. McPhaill*, 30 Pac., 1092, 1093, 128 Cal., 444; *Inhabitants of Worcester County vs. Schlesinger*, 82 Mass. (16 Gray), 166, 168; *People vs. Sanitary District of Chicago*, 56 N. E., 953, 956, 184 Ill., 597; *State vs. Withrow* (Mo.), 24 S. W., 638, 641; *Leavenworth & D. M. R. Co. vs. Platte County Court*, 42 Mo., 171, 174.)

Applying these canons of construction to the statute under consideration, and limiting ourselves strictly to the provisions of local law touching the admission of candidates to the bar, we might, as we have said, be inclined to give the statute the mandatory effect which applicant claims should be placed upon it. But we are of opinion that such a construction is precluded by the provisions of the Act of Congress enacted July 1, 1902, which confirm and secure to this court the jurisdiction theretofore conferred upon it. Section 9 of that Act is as follows:

"That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided, and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said Government to change the practice and method of procedure. The municipal courts of said Islands shall possess and exercise jurisdiction as heretofore provided by the Philippine Commission, subject in all matters to such alteration and amendment as may be hereafter enacted by law; and the Chief Justice and Associate Justices of the Supreme Court shall, hereafter be appointed by the President, by and with the advice and consent of the Senate, and shall receive the compensation heretofore prescribed by the Commission until otherwise provided by Congress. The judges of the Court of First Instance shall be appointed by the Civil Governor, by and with the advice and consent of the Philippine Commission: Provided, That the admiralty jurisdiction of the Supreme Court and Courts of First Instance shall not be changed except by Act of Congress."

Prior to the passage of this Act the power and jurisdiction of this court in relation to the admission of candidates to the bar of the Philippine Islands had been fixed by the provisions of the Organic Act (No. 136) and the Code of Civil Procedure (Act No. 190); and as we understand these provisions this court was vested thereby with authority, and charged with a duty to pass upon the "moral character and the "qualifications and ability" of all candidates for admission to the bar.

The pertinent provisions of these statutes are as follows:

(Act No. 136.)"Sec. 2. Constitution of judiciary. The judicial power of the Government of the Philippine Islands shall be vested in a Supreme Court, Courts of First Instance, and courts of justices of the peace, together with such special jurisdictions of municipal courts, and other special tribunals as now are or hereafter may be authorized by law. The two courts first named shall be courts of record.

(Act No. 136.) "SEC. 16. Jurisdiction of the Supreme Court.—The jurisdiction of the Supreme Court shall be of two kinds:

- "1. Original; and
- "2. Appellate.

"Sec. 17. Its original jurisdiction. — The Supreme Court shall have original jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and quo warranto in the cases and in the manner prescribed in the Code of Civil Procedure, and to hear and determine the controversies thus brought before it, and in other cases provided by law.

(Act No. 190.)"Sec. 13. Who may practice as lawyers.—The following persons, if not specially declared ineligible, are entitled to practice law in the courts of the Philippine Islands:

"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;

"2. Those who are hereafter licensed in the manner herein prescribed.

"Sec. 14. Qualifications of applicants.—Any resident of the Philippine Islands, not a subject or citizen of any foreign government, of the age of twenty-three years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as a member of the bar of the Islands and to practice as such in all their courts.

"Sec. 15. Certificate of good character required.—Every applicant for admission as a member of the bar must produce before the Supreme Court satisfactory testimonials of good moral character, and must satisfactorily pass a proper examination upon all the codes of law and procedure in force in the Philippine Islands, and upon such other branches of legal learning as the Supreme Court by general rule shall provide. * * *

"Sec. 16. Place and manner of examinations.—Such examinations shall be conducted at Manila, by the judges of the Supreme Court or by a committee of competent lawyers by them to be appointed, and shall be held at such times as the judges of that court shall provide by general or special rules."

Manifestly, the jurisdiction thus conferred upon this court by the Commission and confirmed to it by the Act of Congress would be limited and restricted, and in a case such as that under consideration wholly destroyed, by giving the word "may," as used in the above citation from Act No. 1597, a mandatory rather than a permissive effect. But any Act of the Commission which has the effect of setting at naught in whole or in part the Act of Congress of July 1, 1902, or of any Act of Congress prescribing, defining or limiting the power conferred upon the Commission is to that extent invalid and void, as transcending its rightful limits and authority.

The Act of Congress was the creator of the Commission and indeed of the Government of these Islands, which is the creature of its creator. Its powers are defined, prescribed and limited by the Act which created it, and by such other lawful acts of its creator as may further define, prescribe, limit or expand these powers. It cannot lawfully transcend or infringe upon the limits thus prescribed, and any Act of the Commission repugnant to the Act of Congress which created it, or which is repugnant to any other lawful Act of its creator defining, prescribing or limiting its authority is void and invalid. The various Acts of Congress conferring power upon the Philippine Legislature, and defining, prescribing and limiting this power, especially the Act of Congress of July 1, 1902, are to that Legislature in the nature of an organic act with its amendments, binding on it in like manner as is the Constitution of the United States upon Congress itself.

In the great case of *Marbury vs. Madison* (1 Cranch, 175), the Supreme Court of the United States, in a decision written by Chief Justice Marshall, laid down the doctrine in this regard which has been followed by that court unhesitatingly ever since. In that case the court held that an Act of Congress repugnant to the Constitution cannot become law, and that the courts of the United States are bound to take notice of the Constitution.

Applying the reasoning of that case to the question of the validity of an Act of the Philippine Commission enacted since the date of the passage of the Philippine Bill which is found to be in conflict with the provisions of the Act of Congress dealing with the same subject matter, and especially with the provisions of the Philippine Bill itself, we think there can be no doubt as to the result. The Act of the Commission in so far as it is in conflict with or in any wise repugnant to the various Acts of Congress dealing with the same subject matter must be held to be void and of no effect. Paraphrasing slightly the language used in the early case of *Kemper vs. Hawkins* (1 Va. Cases, 20-24), it may be said that the Acts of the Congress of the United States are to the Commission, or rather to all the departments of the Philippine Government, what a law is to individuals; nay, they constitute not only a rule of action to the various branches of the Government, but it is from them that the very existence of the power of the Government flows, and it is by virtue of the Acts of Congress that the powers (or portions of the right to govern) which may have been committed to this Government are prescribed. The Act of Congress was the Commission's commission; nay, it was its creator.

Section 9 of the Act of Congress, set out above, placed it beyond the power of the local Legislature to deprive this court of the jurisdiction or power theretofore granted to it; leaving however, to local legislative authority the right to confer additional jurisdiction, or to change the practice and method of procedure. The above cited provisions of Act No. 190, in force at the time when the Act of Congress was enacted, conferred upon this court the power and jurisdiction to deny admission to candidates for the bar unless, in addition to certain other prescribed conditions, they satisfy the court that they possess the necessary learning in the law, by passing an examination prescribed by general rule. It seems clear, therefore, that the Commission, while it was undoubtedly authorized to modify the provision requiring the holding of examinations under general rules (that being merely the prescribed mode of procedure whereby the court was required to ascertain the qualifications of the candidate), had no authority to deprive this court of its power to deny admission to any candidate who fails to satisfy it that he possesses the necessary qualifications for admission to the bar of the Philippine Islands.

In construing a statute enacted by the Philippine Commission we deem it our duty not to give it a construction which would be repugnant to an Act of Congress, if the language of the statute is fairly susceptible of another construction not in conflict with the higher law. In doing so, we think we should not hesitate to disregard contentions touching the apparent intention of the legislator which would lead to the conclusion that the Commission intended to enact a law in violation of the Act of Congress. However specious the argument may be in favor of one of two possible constructions, it must be disregarded if on examination it is found to rest on the contention that the legislator designed an attempt to transcend the rightful limits of his authority, and that his

apparent intention was to enact an invalid law.

Black on Interpretation of Laws at page 87 says: "In construing a doubtful or ambiguous statute, the courts will presume that it was the intention of the legislature to enact a valid, sensible, and just law, and one which should change the prior law no further than may be necessary to effectuate the specific purpose of the act in question. The construction should be in harmony with this assumption whenever possible."

The same author, at pages 93 and 94, says: "Hence it follows that the courts will not so construe the law as to make it conflict with the constitution, but will rather put such an interpretation upon it as will avoid conflict with the constitution and give it full force and effect, if this can be done without extravagance. If there is doubt or uncertainty as to the meaning of the legislature, if the words or provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even, though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed."

Without undue straining of the language used in the statute under consideration, the word "may" may be construed as either mandatory or permissive in its effect. But to construe it as mandatory would bring it in direct conflict with the Act of Congress, and we conclude therefore, despite the contentions of the applicant as to the apparent intention of the legislator, that it should be given its permissive and not its mandatory effect, and that the true intention of the legislator was to leave it within the discretion of the court to admit to the bar without examination the officials mentioned in the Act in any case wherein the court is otherwise satisfied that they possess the necessary qualifications.

Ordinarily, and in the absence of any showing to the contrary, it may fairly be assumed that an applicant who has held one of the offices mentioned in the statute, and who, prior to his appointment, had been admitted to the practice of law in the courts of these Islands under the former sovereign or in some other jurisdiction is duly qualified for admission to the bar of these Islands. In the case *In re Du Fresne* (20 Phil. Rep., 488, 492), speaking of the provisions of this Act, we said:

"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."

In the various cases wherein applications for admission to the bar under the provisions of this statute have been considered heretofore, we have accepted the fact that such appointments had been made as satisfactory evidence of the qualifications of the applicant. But in all of those cases we had reason to believe that the applicants had been practicing attorneys prior to the date of their appointment.

In the case under consideration, however, it affirmatively appears that the applicant was not and never had been a practicing attorney in this or any other jurisdiction prior to the date of his appointment as provincial fiscal, and it further affirmatively appears that he was deficient in the required qualifications at the time when he last applied for admission to the bar.

In the light of this affirmative proof of his deficiency on that occasion, we do not think that his appointment to the office of provincial fiscal is in itself satisfactory proof of his possession of the necessary qualifications of learning and ability. We conclude therefore that this application for license to practice in the courts of the Philippines should be denied.

In view, however, of the fact that when he took the examination he fell only four points short of the necessary grade to entitle him to a license to practice; and in view also of the fact that since that time he has held the responsible office of governor of the Province of Sorsogon and presumably gave evidence of such marked ability in the performance of the duties of that office that the Chief Executive, with the consent and approval of the Philippine Commission, sought to retain him in the Government service by appointing him to the office of provincial fiscal, we think we would be justified under the above-cited provisions of Act No. 1597 in waiving in his case the ordinary examination prescribed by general rule, provided he offers satisfactory evidence of his proficiency in a special examination which will be given him by a committee of the court upon his application therefor, without prejudice to his right, if he desires so to do, to present himself at any of the ordinary examinations prescribed by general rule. So ordered.

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

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