

**THE HONORABLE PEDRO CONCEPCION, JUDGE OF THE COURT OF
FIRST INSTANCE OF THE NINTH JUDICIAL DISTRICT, PETITIONER,
VS. THE HONORABLE QUINTIN PAREDES, SECRETARY OF JUSTICE,
RESPOND...**

G. R. No. 17539. December 23, 1921

Ponente: MALCOLM, J.

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MALCOLM, J.:

Early in March, 1921, all the judges of first instance were called to Manila by the Secretary of Justice in order that they might participate in a "drawing of lots" for judicial districts. Prominent members of the Philippine Bar immediately united to halt the holding of the judicial lottery, and to challenge the validity of Act No. 2941, "An Act to amend and repeal certain provisions relative to the judiciary, etc." The petitioner in the test case was Honorable Pedro Concepcion, judge of First Instance of Manila, and the respondent was Honorable Quintin Paredes, Secretary of Justice. A preliminary injunction pendente lite was issued by the writer of this opinion, restraining the said Secretary of Justice from holding, or carrying into effect, the drawing of lots by the judges of the Courts of First Instance. The Secretary of Justice and the Attorney-General, assisted by learned attorneys-at-law, vigorously resisted the attempt to nullify the law in question, or any part thereof. Two extended public hearings have been held, and ten briefs have been filed. The court is fully informed on the points at issue.

The argument has covered a wide range. A number of constitutional objections of paramount importance to the validity of the entire law and to parts of it have been advanced and have been supported by ingenious and eloquent pleas. Without, at this time, expressing any opinion on the correctness of these contentions, our view of the case permits us to bring it into narrow compass and to render a decision on a single question on which we have a well-defined opinion.

The petitioner in this case, as stated, is a judge of first instance of the city of Manila. According to the allegations of the complaint, he is primarily interested in securing an order which will prohibit the holding of the judicial lottery and in having the provision of law on which the lottery rests declared unconstitutional. If this court should hold the second paragraph of section 148 of the Administrative Code, as amended by Act No. 2941, of no effect, the petitioner will have obtained from his cause of action all that he could reasonably expect.

The second paragraph of section 148 of the Administrative Code, as superseded by Act No. 2941, section 1, reads as follows:

"Unless otherwise provided, on March fifteenth, nineteen hundred and twenty-one, and every five years thereafter, the judges of first instance with the same salaries shall exchange judicial districts, and the same shall be done by the auxiliary judges as to the respective groups of judicial districts in which they shall serve during the ensuing five-year period. The exchange of districts or groups of judicial districts shall be determined by lot between the judges affected, observing the following rule, which shall be mandatory: no judge shall continue to serve in the district or group in which he has been serving during the last five years."

Is the paragraph just quoted valid?

The various Acts of the Congress of the United States which have been formally and expressly extended to the Philippines, especially the Act of Congress of August 29, 1916, and the Acts of the Philippine Commission and Legislature which United States statutes have changed to organic laws, constitute the major portion of the so-called Constitution of the Philippine Islands. These Acts, defining, prescribing, and limiting the powers of the Government of the Philippine Islands, are the measure of governmental powers in the Philippines. It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the organic law or by local laws which conform to the organic law.

An Act of the Philippine Legislature which has not been expressly disapproved by Congress is valid unless the subject-matter has been covered by Congressional legislation, or its enactment forbidden by some provision of the organic law. In the exact language of the Organic Act, the Act of Congress of August 29, 1916, section 8, "General legislative power, except as otherwise herein provided, is hereby granted the Philippine Legislature authorized by this Act." Our specific inquiry, then, is, whether the field has been entered by(the Congress of the United States to such an extent as to exclude the Philippine Legislature therefrom, or, in other words, whether it has been "otherwise herein provided" by the Congress of the United States.

The Organic Act vests supreme executive power in the Governor-General of the Philippine Islands. Authority to appoint and commission officers is conferred upon him. (Sec. 21.) The same provision of law gives to the Philippine Senate authority to confirm or reject appointments made by the Governor-General. The law specifically prescribes that "* * * The judges of the Courts of First Instance shall be appointed by the Governor-General, by and with the advice and consent of the Philippine Senate: * * *" (Sec. 26.)

Appointment to office is intrinsically an executive act involving the exercise of discretion. (Keim vs. U. S. [1900], 177 U. S., 290.) Likewise, the action of the Philippine Senate, in its consideration of the nominations of the Governor-General, requires the exercise of its best judgment.

When, in pursuance of the power vested in the Governor-General and the Philippine Senate, judges of first instance are selected for positions on the bench, the appointments so made are for specific offices. Judges of first instance are not appointed judges of first instance of the Philippine Islands but are appointed judges of the Courts of First Instance of the respective Judicial Districts of the Philippine Islands. They hold these positions of judges of first instance of definite districts until they either resign, reach the age of retirement, or are removed through impeachment proceedings. The intention of the law is to recognize separate and distinct judicial offices. (Borromeo vs. Mariano [1921], 41 Phil., 343; Act No. 2347 in force when Organic Act enacted; Administrative Code of 1917, sees. 128, 146, 153, 154, etc.; Act No. 2941.)

It will at once be noticed that we have just announced basic propositions so firmly intrenched in law, precedents, and common sense, as to be unquestioned. Merely to state these axiomatic principles would suffice to demonstrate the invalidity of the law. But, possibly, further explanation is required so that no misapprehension as to the reasons for our position may exist.

In the exercise. of the discretionary power which the Congress of the United States saw fit to confer upon them, the Governor-General, with the assent of the Philippine Senate, appointed Pedro Concepcion judge of first instance of a definite judicial district. In his official oath of office, Judge Concepcion swore to "faithfully and impartially discharge and perform all the duties incumbent upon me as Judge, Ninth Judicial District, Manila, according to the best of my ability and understanding, agreeably to the laws of the Philippine Islands." Pedro Concepcion, as such judge of First Instance for the city of Manila, had jurisdiction only in the judicial district comprehending the metropolis. But, if the judicial lottery had been held, as planned, on March 15, 1921, Pedro

Concepcion would have been removed from Manila and would have had to proceed to another district. Having determined by lot to which district he would be assigned, either one of two contingencies must happen: either Pedro Concepcion, judge of First Instance of the city of Manila by valid appointment of the Governor-General, by and with the advice and consent of the Philippine Senate, would go to another district than that to which he was appointed, pursuant to the certification of the Secretary of Justice, or he would go to the new district pursuant to a new appointment by the Governor-General, by and with the advice and consent of the Philippine Senate. Following the first horn of the dilemma would result in a violation of the law, for there can be no valid appointment to an office so long as the appointing power, in this instance the Governor-General and the Philippine Senate, and not the Secretary of Justice, is not exercised. And the second horn of the dilemma would reach the same result, for instead of an exercise of judgment by the Governor-General and the Philippine Senate, they would be required to perform merely a ministerial act and to register approval of an appointment determined by chance.

That the latter hypothesis is the more reasonable one, and that it was in the legislative mind to require a complete cessation of duties in the various judicial districts of the Philippine Islands every five years and to have new appointments made, is shown by the phraseology of Act No. 2941 and by a provision in its title. The law just mentioned speaks of the "new office" and of the districts "for which he (the judge) is commissioned." One clause of the title reads: "Providing that the judges or auxiliary judges of first instance who have served five years in their district or group, as the case may be, may not be reappointed to the same district or group." "New office," "commissioned," and "reappointed" are certainly unfortunate expressions if mere temporary assignments, or transfers, or interchange of positions were intended. On the contrary, there seems to have been contemplated acts in the nature of indirect removals which would conceivably be in derogation of the powers conferred by the fundamental law on the Supreme Court and the Governor-General, and selection by chance for new districts to which the judges have never been appointed.

The law before us would require a drawing of lots for judicial positions, while the organic law would require selection for judicial positions by the Governor-General with the assent of the Philippine Senate. Chance has been substituted for executive judgment. Appointment by lot is not appointment by the Governor-General. Appointment by lot is not appointment with the advice and consent of the Philippine Senate. To leave the selection of a person for a given judicial office to lot is not to appoint, but is to gamble with the office. To such a method we cannot give the seal of our approval.

Copious citations of authorities have been made by counsel. None on examination is found to be directly in point. Thus, the attorneys for the respondent have found consolation in two decisions of this court; namely, *Conchada vs. Director of Prisons* ([1915], 31 Phil., 94), and *Chanco vs. Imperial* ([1916], 34 Phil., 329). The first case cited did no more than to approve a law establishing a new division of judicial territory, without altering the organization of the courts and without depriving them of their jurisdiction.—And this, it may be remarked parenthetically, is the view of the writer of the decision, now the honored Chief Justice of this Court. The second case cited held valid a provision of law which provided that every judge of the Court of First Instance shall cease to be such on the completion of the sixty-fifth year of his age. In the course of the opinion is found the following: "* * * Prescribing the method of appointment does not involve necessarily or even remotely the qualifications of the judge. It is true that the power of appointment is closely connected with the qualifications of the person to be appointed; but they are not so closely connected that it may be said that when Congress enters one field" (that is, of appointment), "it thereby excludes the Philippine Legislature from the other ;" (that is, of prescribing or fixing the qualifications of officers). "We believe that the two questions are so separate, both by nature and by form, that the fact that Congress has legislated with regard to the one does not thereby prohibit the Philippine Legislature from legislating as to the other."

An exhaustive search of the authorities reveals only one case which is even of persuasive authority, *Commonwealth vs. County Commissioners* ([1813], 5 Binney's Reports, 534). Here, the facts were that the commissioners of Philadelphia County, being unable to agree on the selection of a treasurer, it was agreed to draw cuts to determine which of two candidates should be appointed, with the result that one Liberty Browne was the winner. On the next day, two of the commissioners, being ashamed of what had occurred, proceeded to a new appointment, with the result that Daniel Groves was selected to be treasurer. Mandamus was asked to require the commissioners to grant to Liberty Browne a certificate of appointment to the office of treasurer, and this was refused, the court being of the opinion that "this is an extremely clear case. It is at the same time a very important one." It was further said: "We should be sorry if the public supposed we could have any doubt upon the subject. The law intended that the appointment of county treasurer should be made by the judgment of the commissioners, and it has been made by chance; * * * We therefore approve of the commissioners who reflected, and repented, and proceeded to a new appointment." So is it our opinion that this is an extremely clear case. So, also, would we be sorry if any one supposed that we could have any doubt upon the subject.

It is not within the power of the Philippine Legislature to enact laws which either expressly or impliedly diminish the authority conferred by an Act of Congress on the Chief Executive and a branch of the Legislature. Deliberately considered solely as a question of constitutional law, and putting to one side all irrelevant questions of expediency and of motive, we conclude that the power of appointment and confirmation vested by the Organic Act in the Governor-General and the Philippine Senate is usurped by a lottery of judicial offices every five years. An independent and self-respecting judiciary must continue to exist in the Philippines. The orderly course of constitutional government must be maintained.

It is our holding that the second paragraph of section 148 of the Administrative Code, as superseded by Act No. 2941, is in violation of the provisions of the Organic Act and, consequently, invalid.

The preliminary injunction heretofore issued shall be made permanent. No costs shall be assessed. So ordered.

Araullo, C. J., Johnson, Ostrand, Johns, and Romualdez, JJ., concur.

Street, and Villamor, JJ., reserve their votes.

CONCURRING

AVANCENA, J.,

I concur in the result. My vote is limited to that part of the decision whereby Act No. 2941, paragraph 2, as applied to the case of Honorable Pedro Concepcion, formerly appointed judge of the Court of First Instance for the Ninth Judicial District, is held invalid in so far as its application would make Honorable Pedro Concepcion a judge of another district, without having been appointed by the Governor-General, by and with the advice and consent of the Senate, or without this appointing power having any discretion to act on the appointment should they appoint him and consent to his appointment in accordance with the result of the drawing of lots.

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