

TRANQUILINO BUENVIAJE, APPLICANT AND APPELLANT, VS. THE DIRECTOR OF LANDS ET AL., OPPONENTS; ADRIANO DE LOS REYES ET AL., OPPONENTS AND APPELLANTS.*G.R. No. 25067. February 23, 1927*

Ponente: STREET, J.

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This is a proceeding from the Court of First Instance of Batangas in a land registration proceeding (expediente No. 171, G. L. R. O. Record No. 19802), in which the applicant, Tranquilino Buenviaje, seeks to procure the registration of a parcel of land containing an area of about eight hectares, located in the barrio of Anilao, municipality of Mabini, Province of Batangas. "The application was opposed, as to part, by the Director of Lands, and as to other parts, by various individuals, as well as by the provincial fiscal of Batangas, on behalf of the province. The decision of the Court of First Instance having been in part unfavorable to the applicant, he appealed, and the case has already been considered and (as was supposed) finally disposed of in a series of unpublished decisions in the second division of this court promulgated on June 26, November 15, and December 24, 1926, respectively. In the conclusion finally reached, the court, consisting of five members in division, was divided, and the effective decision was rendered by a majority of three to two. As the conclusion thus reached was still in part unfavorable to the appellant, a petition for reconsideration was interposed by his attorneys on January 6, 1927, raising the fundamental question whether it is competent for three members in division to pronounce judgment, it being maintained that, under our Organic Law, at least four members, whether in full court or in division, must concur in a judgment. Owing to the fundamental character of the question thus presented, the point was called to the attention of the full court, with the result presently to be stated.

In order to exhibit this contention intelligibly, it is necessary to refer briefly to the history of the legislation relating to the organization of the court, though the same will be found already fully sketched in *United States vs. Limsiongco* (41 Phil., 94). It appears that, by section 8 of Act No. 136 of the Philippine Commission, enacted June 11, 1901, this court was constituted with seven Justices, to wit, the Chief Justice and six Associate Justices. It was declared in the same section that five of these should form a quorum, and that the concurrence of at least four members of the court should be necessary to pronounce a judgment. These provisions were incorporated and reenacted without substantial change in sections 158 and 163 of the first Administrative Code (Act No. 2657 of the Philippine Legislature, enacted February 24, 1916). When the general revision of the Administrative Code was effected in 1917 by Act No. 2711 of the Philippine Legislature, a change was introduced into the law, which consisted in an increase of the number of Justices to nine, and the addition of a new provision allowing the court to sit in division to transact business of minor importance, as prescribed in section 138 of said Act. In the section cited, after defining the matters which can be dealt with only by the full court with a quorum of six, it is declared that, "In all other cases the presence of four judges shall be sufficient to form a quorum, and the concurrence of three judges for the pronouncement of a judgment." It is now maintained in the motion before us that so much of this provision as allows a decision to be made with the concurrence of only three judges in division, with a

quorum of four or more, is inconsistent with the provisions of the Organic Acts relating to the court.

The Congressional legislation pertinent to the matter is found in that part of section 9 of the Philippine Bill of July 1, 1902, which declares that the Supreme Court of the Philippine Islands "shall possess and exercise jurisdiction as heretofore provided * * * subject to the power of said Government to change the practice and method of procedure." This provision of the Philippine Bill was repeated substantially in section 26 of the Jones Law of August 29, 1916, in the following language: "That the Supreme Court * * * shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law."

As a consequence of these provisions, it is claimed that it was not competent for the Philippine Legislature to change the law so as to allow a decision in division to be made by three, instead of four members of the court. In this connection it is insisted that the provisions last above cited make it mandatory for this court to exercise its jurisdiction in the same manner that had been prescribed by law before the enactment of the Philippine Bill and the Jones Law; and it is said that in so far as concerns the number of Justices necessary for the pronouncement of a judgment, the situation is precisely the same as if the Jones Law had itself declared that the concurrence of at least four members of the court shall in all cases be necessary to the pronouncement of a judgment.

With this contention we are unable to agree. In *United States vs. Limsiongco* (41 Phil., 94), it was held by this court that it was competent for the Legislature of the Philippine Islands to change the law with reference to the organization of the Supreme Court so far as to permit the court to sit in divisions as well as in full court. In the course of that opinion, we said: "* * * There is but one Supreme Court of the Philippine Islands. It is the jurisdiction of this Supreme Court which cannot be diminished. The Supreme Court remains a unit notwithstanding it works in divisions. Although it may have two divisions, it is but a single court. Actions considered in any one of these divisions and decisions rendered therein are, in effect, by the same Tribunal. The two divisions of this court are not to be considered as two separate and distinct courts but as divisions of one and the same court. In the exact words of the law which is questioned, 'the Supreme Court shall, as a body, sit in banc, but it may sit in divisions * * *.' " In the course of the same opinion it was, we think, quite clearly demonstrated that the question of the number of Justices necessary to participate in a case in the Supreme Court is not jurisdictional but rather a matter of procedure; and it was declared, further, that an act of the Philippine Legislature relating to the court is not void merely because it is inconsistent with some provision or other of the original Judiciary Act (No. 136) with respect to organization or procedure. The doctrine enunciated in that case seems to us conclusive of the question now before us; and if it is not, a close examination of the pertinent provisions of the Congressional legislation will show clearly that the motion before us is not well founded. The word "as," used in the provisions above quoted from the Philippine Bill and the Jones Law, is clearly a relative pronoun and has reference to the jurisdiction of the court in its extension and not in the manner of its exercise. The attorneys for the appellant seem to construe the word "as" in the sense of an adverb, having reference to the manner of the exercise of the jurisdiction of the court. This cannot be sound, for the expression "shall possess and exercise jurisdiction as heretofore provided" is immediately followed, in the Philippine Bill, by words which expressly save to the Philippine Government the right to change the practice and method of procedure of the court. The word "jurisdiction" is used to indicate a certain relation between the court and the subject matters that come before it for decision; and the reference here is rather to the extension of the various subjects over which the court has judicial power than to the manner of exercise of its power.

Again, it is obvious that, whatever may be its full import, the word "jurisdiction" refers to something which, if once possessed by a court, does not vanish in the vicissitudes of decision. After a cause over which a division has undoubted jurisdiction has been debated and considered, the jurisdiction of the body does not cease when it is discovered that only three out of four or five of the members of the division concur in the prevailing view. This

shows that the matter of the requirement of a certain number for the decision of a case is a matter of practice and procedure rather than of fundamental jurisdiction. Where a body consisting of more than two members is created, it must, by the very law of its being, be allowed to proceed upon a mere majority, in the absence of specific provision for a majority consisting of a precise number. With reference to the matter before us, Congress has never legislated upon the point of the precise number of Justices necessary for a decision; and, in the absence of such legislation, the conclusion must be that the determination of this point has been left within the competence of the Philippine Legislature. In our opinion the provision of the Administrative Code, authorizing three members of this court in division to make a decision, is valid. The motion is therefore denied.

Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

Johnson, J., dissents.

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