

FELIPE TAYKO, EDUARDO BUENO, BAUTISTA TAYKO, BERNARDO SOLDE AND VICENTE ELUM, PETITIONERS, VS. NICOLAS CAPISTRANO, ACTING AS JUDGE OF FIRST INSTANCE OF ORIENTAL NEGROS, ALFREDO ...

G.R. No. 30188. October 02, 1928

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-30188/>

OSTRAND, J.:

This is a petition for a writ of prohibition enjoining the respondent judge from taking cognizance of certain civil and criminal election cases in which the petitioners are parties.

The petitioners allege that the respondent judge, previous to this date, was appointed judge of the Court of First Instance of Oriental Negros, to hold office during good behavior and until he should reach the age of 65 years; that he now has reached that age and, therefore, under the provisions of section 148 of the Administrative Code as amended, is disqualified from acting as a judge of the Court of First Instance. The petitioners further allege that in view of the many election protests and criminal cases for violation of the election law filed in the Court of First Instance of Oriental Negros arising from the last election of June 5, 1923, the Honorable Sixto de la Costa was duly designated and acted as auxiliary judge of the Province of Oriental Negros; that between the auxiliary judge and the respondent judge herein there was an understanding, and the assignment of the said auxiliary judge was made with this understanding, that the said auxiliary judge so designated would hear and take cognizance of all election protests and criminal actions then pending or to be filed arising from the said last general election, and that the respondent Honorable Nicolas Capistrano would try and-hear the ordinary cases pending in the said court, but, notwithstanding this understanding or agreement, the respondent judge tried and is still trying to take cognizance of the election protests and criminal actions in said court; that the respondent judge declared in open court that he will try the criminal cases herein mentioned for the reason that the auxiliary judge refused to try the same on the ground that the preliminary investigations were held before him, when, in truth and in fact, the said auxiliary judge did not make the statement imputed to him and was and is still willing to try all the election protests and criminal cases for violation of the election law pending in the court of the Province of Oriental Negros; that the respondent Honorable Nicolas Capistrano, in spite of the fact that he was holding and is now pretending to hold the office of judge of the Court of First Instance of Oriental Negros, took great interest and active part in the filing of criminal charges against the petitioners herein to the unjustifiable extent of appointing a deputy fiscal, who then filed the proper informations, when the provincial fiscal refused to file criminal charges against the petitioners for violation of the election law for lack of sufficient evidence to sustain the same; that said respondent is neither a judge de jure nor de facto, but that, notwithstanding this fact, he continues to hold the office of judge of the Court of First Instance of Oriental Negros and pretends to be a duly qualified and acting judge of the said province; and that he has tried, and continues to try, to act as such judge and that there is reasonable ground to believe that he will take cognizance of the cases in question unless he be restrained by order of this court; that, in acting as a duly qualified judge notwithstanding the facts alleged in the fifth, sixth, and

seventh paragraphs hereof, the respondent judge acted and is about to act without and in excess of jurisdiction and also after the loss of jurisdiction.

To this petition the respondents demur on the ground that the facts stated do not entitle the petitioners to the relief demanded in that (1) none of the facts alleged in the petition divest the respondent judge of his jurisdiction to take cognizance of the cases referred to in the complaint, and (2) even admitting as true, for the sake of this demurrer, the facts alleged in paragraph 7 of the petition, the respondent judge is still a de facto judge and his title to the office and his jurisdiction to hear the cases referred to in the petition cannot be questioned by prohibition, as this writ, even when directed against persons acting as judges, cannot be treated as a substitute for quo warranto, or be rightfully called upon to perform any of the functions of that writ.

The grounds upon which the petition rests may be reduced to three propositions: (1) That the assignment of the Auxiliary Judge, Sixto de la Costa, to Dumaguete was made with the understanding that he was to hear and take cognizance of all election contests and criminal causes for violation of the election law and that the respondent judge was to take cognizance of the ordinary cases and that there was an understanding between them that this arrangement was to be followed.

(2) That the respondent judge took great interest and an active part in the filing of the criminal charges against the petitioners herein to the unjustifiable extent of appointing a deputy fiscal who filed the proper informations when the regular provincial fiscal refused to file them for lack of sufficient evidence.

(3) That the respondent judge is already over 65 years of age and has, therefore, automatically ceased as judge of the Court of First Instance of Oriental Negros and that he is neither a judge de jure nor de facto.

(a) But little need be said as to the first proposition. A writ of prohibition to a judge of an inferior court will only lie in cases where he acts without or in excess of his jurisdiction (section 226, Code of Civil Procedure), and it is obvious that a mere "understanding" as to the distribution of cases for trial did not deprive the respondent judge of the jurisdiction conferred upon him by law. It may be noted that it is not alleged that another judge had taken cognizance of the cases in question or that they had been definitely assigned to trial before such other judge.

(b) The second proposition is equally untenable. That the respondent judge took great interest and an active part in the filing of the criminal charges against the petitioners to the extent of appointing a deputy fiscal when the regular provincial fiscal refused to file the proper informations, did not disqualify him from trying the cases in question. Section 1679 of the Administrative Code provides that "when a provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail, to discharge any of the duties of his position, the judge of the Court of First Instance of the province shall appoint an acting provincial fiscal, * * *." (Italics ours.)

The determination of the question as to whether the fiscal has failed to discharge his duty in the prosecution of a crime must necessarily, to a large extent, lie within the sound discretion of the presiding judge, and there is no allegation in the petition that such discretion was abused in the present instance. It is true that it is stated that the appointment of the acting fiscal was "unjustifiable," but that is only a conclusion of law and not an allegation of facts upon which such a conclusion can be formed and may, therefore, be disregarded. It follows that in appointing an acting fiscal, the respondent judge was well within his jurisdiction.

(c) The third ground upon which the petition is based is the most important and merits some consideration. It is well settled that the title to the office of a judge, whether de jure or de facto, can only be determined in a proceeding in the nature of quo warranto and cannot be tested by prohibition. But counsel for the petitioners maintains that the respondent judge is neither a judge de jure nor de facto and that, therefore, prohibition will lie.

In this, counsel is undoubtedly mistaken.

The respondent judge has been duly appointed to the office of Judge of the Court of First Instance of Oriental Negros, but section 148 of the Administrative Code, as amended, provides that "Judges of the Court of First Instance and auxiliary judges shall be appointed to serve until they shall reach the age of sixty-five years." In view of this provision and assuming, as we must, that the allegations of the petition are true, it is evident that the respondent is no longer a judge de jure, but we do not think that it can be successfully disputed that he is still a judge de facto.

Briefly defined, a de facto judge is one who exercises the duties of a judicial office under color of an appointment or election thereto (*Brown vs. O'Connell*, 36 Conn., 432). He differs, on the one hand, from a mere usurper who undertakes to act officially without any color of right, and on the other hand, from a judge de jure who is in all respects legally appointed and qualified and whose term of office has not expired (*State vs. Carroll*, 38 Conn., 449; *Denny vs. Mattoon*, 2 Allen [Mass.], 361; *Van Slyke vs. Farmers' Mut. Fire Ins. Co.*, 39 Wis., 390).

"Apart from any constitutional or statutory regulation on the subject there seems to be a general rule of law that an incumbent of an office will hold over after the conclusion of his term until the election and qualification of a successor" (22 R. C. L., pp. 554-5). When a judge in good faith remains in office after his title has ended, he is a de facto officer (*Sheehan's Case*, 122 Mass., 445).

Applying the principles stated to the facts set forth in the petition before us, we cannot escape the conclusion that, on the assumption that said facts are true, the respondent judge must be considered a judge de facto. His term of office may have expired, but his successor has not been appointed, and as good faith is presumed, he must be regarded as holding over in good faith. The contention of counsel for the petitioners that the auxiliary judge present in the district must be considered the regular judge seems obviously erroneous.

In these circumstances the remedy prayed for cannot be granted. "The rightful authority of a judge, in the full exercise of his public judicial functions, cannot be questioned by any merely private suitor, nor by any other, excepting in the form especially provided by law. A judge de facto assumes the exercise of a part of the prerogative of sovereignty, and the legality of that assumption is open to the attack of the sovereign power alone. Accordingly, it is a well established principle, dating from the earliest period and repeatedly confirmed by an unbroken current of decisions, that the official acts of a de facto judge are just as valid for all purposes as those of a de jure judge, so far as the public or third persons who are interested therein are concerned. The rule is the same in civil and criminal cases. The principle is one founded in policy and convenience, for the right of no one claiming a title or interest under or through the proceedings of an officer having an apparent authority to act would be safe, if it were necessary in every case to examine the legality of the title of such officer up to its original source, and the title or interest of such person were held to be invalidated by some accidental defect or flaw in the appointment, election or qualification of such officer, or in the rights of those from whom his appointment or election emanated; nor could the supremacy of the laws be maintained, or their execution enforced, if the acts of the judge having a colorable, but not a legal title, were to be deemed invalid. As in the case of judges of courts of record, the acts of a justice de facto cannot be called in question in any suit to which he is not a party. The official acts of a de facto justice cannot be attacked collaterally. An exception to the general rule that the title of a person assuming to act as judge cannot be questioned in a suit before him is generally recognized in the case of a special judge, and it is held that a party to an action before a special judge may question his title to the office of judge on the proceedings before him, and that the judgment will be reversed on appeal, where proper exceptions are taken, if the person assuming to act as special judge is not a judge de jure. The title of a de facto officer cannot be indirectly questioned in a proceeding to obtain a writ of prohibition to prevent him from doing an official act, nor in a suit to enjoin the collection of a judgment rendered by him. Having at least colorable right

to the office his title can be determined only in a quo warranto proceeding or information in the nature of a quo warranto at suit of the sovereign." (15 R. C. L., pp. 519-521.)

The demurrer to the petition is sustained, and inasmuch as it is evident that the weakness of the petition cannot be cured by amendment, the present proceedings are hereby dismissed with the costs against the petitioners jointly and severally. The preliminary injunction hereinbefore issued is dissolved. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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.