

**HIGINO ENAGE, PLAINTIFF, VS. FRANCISCO MARTINEZ,  
DEFENDANT.***G.R. No. 30896. March 05, 1929*

Ponente: MALCOLM, J.

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This is an action of quo warranto with preliminary injunction commenced by Higinio Enage, provincial assessor of Leyte, against Francisco Martinez, provincial treasurer of Leyte, to test the legal right of the provincial board of Leyte and the Chief of the Executive Bureau to provide for the fusion of the office of provincial assessor of Leyte with the office of provincial treasurer of that province. To the complaint, the defendant has interposed a demurrer.

Higinio Enage was appointed provincial assessor of Leyte on December 13, 1917, by the Chief of the Executive Bureau. Mr. Enage has filled the position to which named from that date until the present. Beginning with 1925, the provincial board of Leyte has made unsuccessful attempts to legislate Mr. Enage out of office. One of these attempts resulted in an opinion by the Attorney-General disapproving the legality of the board's action. However, undismayed by previous failures, on February 28, 1928, the provincial board of Leyte provided for the fusion of the offices of the provincial assessor and the provincial treasurer. This resolution, on reaching the Executive Bureau, was approved effective January 1, 1929. Subsequently, the provincial board of Leyte adopted another resolution providing that beginning with January 1, 1929, the provincial treasurer be regarded as provincial assessor with all the rights and privileges pertaining to that office.

A technical defense suggested by the demurrer must first be noticed. The complaint fails to allege that the defendant is unlawfully in possession of the office claimed by the plaintiff. Quo warranto will lie only when the party proceeded against is either a de facto or a de jure officer in possession of the office. (Code of Civil Procedure, sees. 201, 202; Lino Luna vs. Rodriguez [1917], 36 Phil., 401; 22 R. C. L., p. 663.) However, as all that keeps the defendant from taking possession of the office of provincial assessor of Leyte is the restraining order of this court, and as after having done so the same state of facts would be present, it is deemed more practicable and more to the public interest to decide the case on the merits.

Sections 2092 and 2093 of the Administrative Code provide:

"SEC. 2092. Provincial assessor.—There shall be a provincial assessor in each province wherein is located real property subject to the annual ad valorem tax.

"Except as otherwise specially provided, he shall be appointed by the Chief of the Executive Bureau upon nomination of the provincial board. He shall be a resident of the province to which appointed, and his salary shall be as fixed by the provincial board with the approval of the Chief of the Executive Bureau."

"SEC. 2093. Application of Civil Service Law to assessor and deputy assessor.—The positions of assessor and deputy assessor shall not be primarily subject to the provisions of the Civil Service Law; but if any civil-service employee should be transferred to such position or the duties thereof should be imposed upon any such employee, his civil service status and privileges shall not be thereby suspended or impaired.

"A Government officer or employee appointed to the position of assessor or deputy assessor may be allowed additional compensation for his services in such capacity which shall be fixed in his appointment or designation."

With reference to the application which should be given to the above-quoted legal provisions, it is to be noted that the law contemplates that a government officer or employee may be appointed to the position of assessor or deputy assessor. This being true, the particular point now to be decided is whether or not there exists incompatibility between the positions of provincial assessor and provincial treasurer. We do not think that it has been shown that the functions of the two offices are inconsistent. Originally and before the position of provincial assessor was created by Act No. 2238, the provincial treasurer, either in person or by authorized deputy, supervised the appraisal and assessment of real property in all the municipalities of the province (Provincial Government Act, No. 83, sec. 9). Contrasting the duties of the provincial assessor with the duties of the provincial treasurer, there is no conflict of interests and one office is not subordinate to the other.

There is another aspect to the question. According to a statement made by the Assistant Chief of the Executive Bureau, for about ten years it has been the policy of that office to have the provincial treasurers hold at the same time the position of provincial assessor in their respective provinces "for purposes of efficiency and economy. As a result of this policy there are only four provinces now, namely: Bohol, Leyte, Pangasinan and Oriental Negros whose provincial assessors are not the provincial treasurers." This settled governmental practice should be respected by the courts. The opinion emitted by the Attorney-General is not in conflict with this view for this opinion had to do with the action of the provincial board of Leyte in endeavoring by itself to abolish the office of provincial assessor, while the instant facts concern the action taken by the Chief of the Executive Bureau, the appointing power.

It results, therefore, in the demurrer being sustainable on two grounds, the first having to do with the defect in the complaint, and the second having to do with the material question which is in dispute. As to the latter, we rule that the consolidation of the positions of provincial assessor and provincial treasurer was legal. Accordingly, the demurrer to the complaint will be sustained, and as it is manifest that it would be impossible to reform the complaint to state a good cause of action, the proceedings will be dismissed and the preliminary injunction previously issued set aside. Without special taxation of costs, it will be so ordered.

Johnson, Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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