

JUAN TANADA, PETITIONER, VS. JOSE YULO, SECRETARY OF JUSTICE, EDUARDO GUTIERREZ DAVID, JUDGE OF FIRST INSTANCE OF THE THIRTEENTH JUDICIAL DISTRICT, AND SANTIAGO TAFTADA, JUSTICE...

G.R. No. 43575. May 31, 1935

Ponente: MALCOLM, J.

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MALCOLM, J.:

For the second time the court is called upon to determine the right of a justice of the peace appointed prior to the approval of Act No. 3899, but who completed sixty-five years of age subsequent to the approval of the Act and to the date, January 1, 1933, specified in the Act, to continue in, office. The answer of the Solicitor-General presents two questions, the first predicated on the contention that Act No. 3899 applies to all justices of the peace who reach the age of sixty-five years, and the second on the acceptance of a transfer by the petitioner as denoting a new appointment bringing him within the purview of the cited law.

Juan Tañada, the petitioner, was appointed justice of the peace of Alabat, Tayabas, by the Governor-General with the advice and consent of the Philippine Commission on December 4, 1911. He continued in that position until September 8, 1934, when at his own request, "Pursuant to the provisions of section 206 of the Revised Administrative Code", he was "transferred from the position of justice of the peace for the municipality of Alabat, Province of Tayabas, to the same position in the municipality of Perez, same province", by a communication signed by the Governor-General from which the foregoing is quoted, Tanada completed the age of sixty-five years on October 5, 1934. Thereupon the Judge of First Instance of Tayabas, acting in accordance with instructions from the Department of Justice, directed Tanada to cease to act as justice of the peace of Perez, Tayabas. Tanada surrendered his office under protest, and thereafter instituted this original action of quo warranto.

The applicable law is found in the last proviso to section 203 of the Administrative Code, as inserted by Act No. 3899, and in the proviso to section 206 of the same Code as last amended by Act No. 2768, which read as follows:

"Sec. 203. Appointment and distribution of justices of the peace.— * * *. Provided, further, That the present justices and auxiliary justices of the peace who shall, at the time this Act takes effect, have completed sixty-five years of age, shall cease to hold office on January first, nineteen hundred and thirty-three; and the Governor-General, with the advice and consent of the Philippine Senate, shall make new appointments to cover the vacancies occurring by operation of this Act."

"SEC. 206. Tenure of office—Transfer from one municipality to another.—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: Provided, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another."

The first question raised by the Solicitor-General was considered in the recent case of Felipe Regalado, petitioner, vs. Jose Yulo, Secretary of Justice, Juan G. Lesaca, Judge of First Instance of Albay, and Esteban T. Villar,

respondents (page 173, ante). It was there decided that the natural and reasonable meaning of the language used in Act No. 3899, leaves room for no other deduction than that a justice of the peace appointed prior to the approval of the Act and who completed sixty-five years of age on September 13, 1934, subsequent to the approval of the Act, which was on November 16, 1931, and to the date fixed for cessation from office which was on January 1, 1933, is not affected by the said Act. The law officer of the Government has indicated that the above cited decision came from a Division of Five and has requested a reconsideration of the issue therein resolved.

Acceding to this petition, we have again examined microscopically word for word the terminology used in Act No. 3899. Having done so, all of us are agreed that a justice of the peace like the petitioner who became sixty-five years of age on October 5, 1934, was not included in a law which required justices of the peace sixty-five years of age to cease to hold office on January 1, 1933. That result is now arrived at in banc.

In substantiation of what has just been said, it is of course fundamental that the determination of the legislative intent is the primary consideration. However, it is equally fundamental that that legislative intent must be determined from the language of the statute itself. This principle must be adhered to even though the court be convinced by extraneous circumstances that the Legislature intended to enact something very different from that which it did enact. An obscurity cannot be created to be cleared up by construction and hidden meanings at variance with the language used cannot be sought out. To attempt to do so is a perilous undertaking, and is quite apt to lead to an amendment of a law by judicial construction. To depart from the meaning expressed by the words is to alter the statute, is to legislate not to interpret.

As corroborative authority it is only necessary to advert to a decision coming from the United States Supreme Court, *iii* which the court was asked to insert the Word "lawfully", but the court declined to do so, saying that there is no authority to import a word into a statute in order to change its meaning. (*Newhall vs Sanger*, 92 U. S., 761.) The thought was expressed by the same court in another case, when it said that courts are bound to follow the plain words of a statute as to which there is no room for construction, regardless of the consequences. (*Commissioner of Immigration vs. Gottlieb*, 265 U. S., 310; see 25 R. C. L., 961 et seq.)

Counsel in effect urges us to adopt a liberal construction of the statute. That in this instance, as in the past, we aim to do. But counsel in his memorandum concedes "that the language «of the proviso in question is somewhat defective and does not clearly convey the legislative intent", and at the hearing in response to questions was finally forced to admit that what the Government desired was for the court to insert words and phrases in the law in order to supply an intention for the legislature. That we cannot do. By liberal construction of statutes, courts from the language used, the subject matter, and the purposes of those framing them are able to find out their true meaning. There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.

We give application to the decision of this court in *Regalado vs. Yulo*, *supra*, and as a result overrule the first defense of the Government.

Passing to the second phase of the case, counsel has endeavoured to draw a distinction between the *Regalado* case above cited and the present case. On the facts there is admittedly one difference. In the *Regalado* case the petitioner had not been transferred from one municipality to another, while in the present case, Tanada accepted a transfer from one municipality to another. Did the transfer amount to a new appointment bringing Tanada under the purview of the law relating to relinquishment of office on attaining the age of sixty-five?

The effect of the Organic Act is that an appointment of a justice of the peace by the Governor-General must be consented to by the Philippine Senate. In consonance with this provision, the method of appointment and distribution of justices of the peace are outlined in section 203 of the Administrative Code, a portion of which is hereinbefore quoted. The transfer from one municipality to another, however, is accomplished by the Governor-General without the advice and consent of the Philippine Senate, in accordance with codal section 206.

In the case of *Nicolas vs. Alberto* (51 Phil., 370), the issue was the legal right of the Governor-General to transfer a justice of the peace from one municipality to another, without the consent of the Philippine Senate. This court held that the consent of the Philippine Senate was a necessary attribute of the transfer. As the basis for this holding, it was stated that the appointing power consists of the Governor-General acting in conjunction with the Philippine Senate. But that case was taken to the United States Supreme Court, and there it was held that the consent of the Senate was unnecessary to make the transfer legal. (*Alberto vs. Nicolas*, 279 U. S., 139.) The holding of the higher court, to follow the language of the syllabus, was that in view of the plenary legislative powers of the Philippine Legislature regarding justices of the peace, Act No. 2768 of the Philippine Legislature is valid as applied to justices of the peace whose appointment was made by the Governor-General, and confirmed by the Senate, after its enactment. In the body of the decision appeared the following :

"* * * When the Senate confirmed Severino Alberto to be a justice of the peace for San Jose del Monte, sec. 206, with the proviso, was in force; and when the Senate confirmed him, it confirmed him with the knowledge of the possibility declared in the law that his powers and his functions as a justice of the peace upon designation of the Governor-General might be performed and exercised in another jurisdiction, if the Governor-General should think it wise in the public interest in his regulation of the conduct of justices of the peace. There is no such necessary difference between the duties of a justice of the peace in one part of the Islands and those to be performed in another part as to make such enlargement or change of his jurisdiction already provided for in existing law unreasonably beyond the scope of the consent to the original appointment"

It is to be deduced from what has been stated above that according to the United States Supreme Court, the transfer simply amounted to an enlargement or change of jurisdiction grounded on the original appointment and thus did not require a new appointment. Whatever our views might have been to the contrary, it now becomes our duty to follow the decision of the higher court. It also seems evident that a transfer as applied to officers amounts merely to a change of position or to another grade of service. (*Cliff vs. Wentworth*, 220 Mass., 393.)

We give application to the decision of the Supreme Court of the United States in *Nicolas vs. Alberto*, supra, and as a result overrule the second defense of the Government.

Before closing it is incumbent upon us to observe that this case was heard in vain because of the suggestion of the Solicitor-General that the principal issue raised by the pleadings is the validity of Act No. 3899 of the Philippine Legislature. Our review of the case has convinced us that this allegation overstates the matter. It is unnecessary to discuss petitioner's contention that Act No. 3899 is unconstitutional because of a defective title. On the other hand, the allegation in the answer that the law is discriminatory and class legislation, and, consequently, unconstitutional has apparently been abandoned. Finally it is to be observed that the fear of disorder in the affairs of the Department of Justice and the Office of the Governor-General on account of the displacement of incumbent justices of the peace, is unfounded, for as is well known, acquiescence or voluntary surrender of an office precludes the maintenance of a quo warranto proceeding.

Giving effect to the decisions of this court in the *Regalado* case and of the Supreme Court of the United States in the *Alberto vs. Nicolas* case, and as a consequence ruling that Act No. 3899 does not apply to a justice of the peace appointed prior to the approval of the Act who completed sixty-five years of age after January 1, 1933, and that a transfer of a justice of the peace does not amount to an appointment, we reach the conclusion that the

special defenses interposed by the Solicitor-General must be overruled. Accordingly, the writ will be granted and the petitioner Juan Tanada will be placed in possession of the office of justice of the peace of Perez, Tayabas. So ordered, without special pronouncement as to the costs.

Abad Santos, Hull, Vickers, Butte, Goddard, and Diaz. JJ., concur.

Writ granted.

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