

FRANCISCO ZANDUETA, PETITIONER, VS. SIXTO DE LA COSTA, RESPONDENT.*G.R. No. 46267. November 28, 1938*

Ponente: VILLA-REAL, J.

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This is a quo warranto proceeding instituted by the Honorable Francisco Zanduetta against the Honorable Sixto de la Costa to obtain from this court a judgment declaring the respondent to be illegally occupying the office of Judge of the Fifth Branch of the Court of First Instance of Manila, Fourth Judicial District, ousting him from said office, and holding that the petitioner is entitled to continue occupying the office in-question by placing him in possession thereof, with costs to said respondent.

Prior to the promulgation of Commonwealth Act No. 145, the petitioner, the Honorable Francisco Zanduetta was discharging the office of judge of first instance, Ninth Judicial District, comprising solely the City of Manila, and was presiding over the Fifth Branch of the Court of First Instance of said city, by virtue of an ad interim appointment issued by the President of the Philippines in his favor on June 2, 1936, and confirmed by the Commission on Appointments of the National Assembly on September 8th of the same year.

On November 7, 1936, the date on which Commonwealth Act No. 145, otherwise known as the Judicial Reorganization Law, took effect, the petitioner received from the President of the Commonwealth a new ad interim appointment as judge of first instance, this time of the Fourth Judicial District, with authority to preside over the Courts of First Instance of Manila and Palawan, issued in accordance with said Act. As the National Assembly adjourned on November 20, 1937, without its Commission on Appointments' having acted on said ad interim appointment, another ad interim appointment to the same office was issued in favor of said petitioner, pursuant to which he took a new oath on November 22, 1937, before discharging the duties thereof. After his appointment and qualification as judge of first instance of the Fourth Judicial District, the petitioner, acting as executive judge, performed several executive acts, some of which consist in the designation of the assistant clerk of the Court of First Instance of Manila, Ladislao Pasicolan, as administrative officer, under the orders of the petitioner, as executive judge of said court, to take charge of all matters pertaining to the Court of First Instance of Palawan, which are handled by said executive judge in Manila (Exhibit 2); in the appointment of attorney Rufo M. San Juan as notary public for the Province of Palawan, said appointment to expire on December 31, 1938 (Exhibit 3); in having authorized justice of the peace Iñigo R. Peña to defend a criminal case the hearing of which had begun during the past sessions in Coron, Palawan (Exhibit 5); in having granted a leave of absence of ten days to justice of the peace Abordo (of Puerto Princesa), Palawan (Exhibit 8); and in having granted a leave of absence of thirteen days to the justice of the peace of Coron, Palawan (Exhibit 9).

On May 19, 1938, the Commission on Appointments of the National Assembly disapproved the aforesaid ad interim appointment of said petitioner, who was advised thereof by the Secretary of Justice on the 20th of said month and year.

On August 1, 1938, the President of the Philippines appointed the herein respondent, Honorable Sixto de la Costa, judge of first instance of the Fourth Judicial District, with authority to preside over the Fifth Branch of the Court of First Instance of Manila and the Court of First Instance of Palawan, and his appointment was approved by the Commission on Appointments of the National Assembly. By virtue of said appointment, the respondent took the necessary oath and assumed office. On the same date, August 1, 1938, the President of the Philippines, pursuant to said appointment of judge of first instance of the Fourth Judicial District and after confirmation thereof, issued the corresponding final appointment in favor of the respondent, Honorable Sixto de la Costa (Exhibit 11).

The respondent, in answer to the petition, admits some of the facts alleged therein and denies the rest, and alleges, as one of his special defenses, that the petitioner is estopped from attacking the constitutionality of Commonwealth Act No. 145, for having accepted his new appointment as judge of first instance of the Fourth Judicial District, issued by virtue thereof, to preside over the Courts of First Instance of Manila and Palawan, and for having taken the necessary oath, entering into the discharge of the functions of his office and performing judicial as well as administrative acts.

The defense of estoppel being procedural, we shall discuss it first to determine whether or not the petitioner may proceed to question the constitutionality of the law by virtue of which the new ad interim appointment of judge of first instance of the Fourth Judicial District, to preside over the Courts of First Instance of Manila and Palawan, was issued in his favor.

As stated beforehand, while the petitioner Honorable Francisco Zandueta was presiding over the Fifth Branch of the Court of First Instance of Manila, Ninth Judicial District, by virtue of an appointment issued to him on June 2, 1936, and confirmed by the National Assembly on September 8th of the same year, he received, on November 7, 1936, a new ad interim appointment, issued in accordance with the provisions of Commonwealth Act No. 145, which took effect on the same date, to discharge the office of judge of first instance, Fourth Judicial District, with authority to preside over the Fifth Branch of the Court of First Instance of Manila and the Court of First Instance of Palawan, upon which he immediately took the corresponding oath and entered into the discharge of his office. Under his former appointment of June 2, 1936, the petitioner had authority to preside solely over the Fifth Branch of the Court of First Instance of Manila but not over the Court of First Instance of Palawan, while, according to his new appointment of November 7, 1936, he had authority to preside not only over said Fifth Branch of said Court of First Instance of Manila but also over the Court of First Instance of Palawan. It should be noted that the territory over which the petitioner could exercise and did exercise jurisdiction by virtue of his last appointment is wider than that over which he could exercise and did exercise jurisdiction by virtue of the former. Hence, there is incompatibility between the two appointments and, consequently, in the discharge of the office conferred by each of them, resulting in the absorption of the former by the latter. In accepting this appointment and qualifying for the exercise of the functions of the office conferred by it, by taking the necessary oath, and in discharging the same, disposing of both judicial and administrative cases corresponding to the Courts of First Instance of Manila and of Palawan, the petitioner abandoned his appointment of June 2, 1936, and ceased in the exercise of the functions of the office occupied by him by virtue thereof.

The rule of equity, sanctioned by jurisprudence, is that when a public official voluntarily accepts an appointment to an office newly created or reorganized by a law,—which new office is incompatible with the one formerly occupied by him—,qualifies for the discharge of the functions thereof by taking the necessary oath, and enters into the performance of his duties by executing acts inherent in said newly created or reorganized office and receiving the corresponding salary, he will be considered to have abandoned the office he was occupying by virtue of his former appointment (46 Corpus Juris, 947, sec. 55), and he can not question the constitutionality of the law by virtue of which he was last appointed (11 American Jurisprudence, 166, par. 121; id., 767, par. 123). He is

excepted from said rule only when his nonacceptance of the new appointment may affect public interest or when he is compelled to accept it by reason of legal exigencies (11 American Jurisprudence, 770, par. 124).

In the case under consideration, the petitioner was free to accept or not the ad interim appointment issued by the President of the Commonwealth in his favor, in accordance with said Commonwealth Act No. 145. Nothing or nobody compelled him to do so. While the office of judge of first instance is of public interest, being one of the means employed by the Government to carry out one of its purposes, which is the administration of justice, considering the organization of the courts of justice in the Philippines and the creation of the positions of judges-at-large or substitutes, the temporary disability of a judge may be immediately remedied without detriment to the smooth running of the judicial machinery. If the petitioner believed, as he now seems to believe, that Commonwealth Act No. 145 is unconstitutional, he should have refused to accept the appointment offered him or, at least, he should have accepted with reservation, had he believed that his duty of obedience to the laws compelled him to do so, and afterwards resort to the power entrusted with the final determination of the question whether a law is unconstitutional or not. The petitioner, being aware of his constitutional and legal rights and obligations, by implied order of the law (art. 2, Civil Code), accepted the office of judge of first instance of the Fourth Judicial District, with authority to preside over the Fifth Branch of the Court of First Instance of Manila and the Court of First Instance of Palawan and entered into the performance of the duties inherent therein, after taking the necessary oath, thereby acting with full knowledge that if he voluntarily accepted the office to which he was appointed, he would later be estopped from questioning the validity of said appointment by alleging that the law, by virtue of which his appointment was issued, is unconstitutional. He likewise knew, or at least he should know, that his ad interim appointment was subject to the approval of the Commission on Appointments of the National Assembly and that if said commission were to disapprove the same, it would become ineffective and he would cease discharging the office.

It appears from all the foregoing that the petitioner having voluntarily abandoned his appointment of June 2, 1936, and, consequently, the office of judge of first instance of Manila, Ninth Judicial District, whose Fifth Branch was being presided over by him by virtue thereof, upon accepting the ad interim appointment of November 7, 1936, to the office of judge of first instance of the Fourth Judicial District, with authority to preside over said Fifth Branch of the Court of First Instance of Manila together with the Court of First Instance of Palawan, and entering into the discharge of the functions of said office, he can not now claim to be entitled to repossess the office occupied by him under his said appointment of June 2, 1936 (22 R. C. L., 560, par. 264), or question the constitutionality of Commonwealth Act No. 145, by virtue of which he has been appointed judge of first instance of the Fourth Judicial District, with authority to preside over the Fifth Branch of the Court of First Instance of Manila and the Court of First Instance of Palawan, which appointment was disapproved by the Commission on Appointments of the National Assembly.

Having arrived at the conclusion that the petitioner is estopped by his own act from proceeding to question the constitutionality of Commonwealth Act No. 145, by virtue of which he was appointed, by accepting said appointment and entering into the performance of the duties appertaining to the office conferred therein, and pursuant to the well settled doctrine established by both American and Philippine jurisprudence relative to the consideration of constitutional questions, this court deems it unnecessary to decide the questions on constitutional law raised in the petition (*Cruz vs. Youngberg*, 56 Phil., 234; *Walter E. Olsen & Co. vs. Aldanese and Trinidad*, 43 Phil., 259; *Yangco vs. Board of Public Utility Commissioners*, 36 Phil., 116; *Government of the Philippine Islands vs. Municipality of Binangonan*, 34 Phil., 518; *McGirr vs. Hamilton and Abreu*, 30 Phil., 563; 12 *Corpus Juris*, 699, section 40; *id.*, 780, section 212).

For the foregoing considerations, we are of the opinion and so hold that when a judge of first instance, presiding

over a branch of a Court of First Instance of a judicial district by virtue of a legal and valid appointment, accepts another appointment to preside over the same branch of the same Court of First Instance, in addition to another court of the same category, both of which belong to a new judicial district formed by the addition of another Court of First Instance to the old one, enters into the discharge of the functions of his new office and receives the corresponding salary, he abandons his old office and cannot claim to be entitled to repossess it or question the constitutionality of the law by virtue of which his new appointment has been issued; and, said new appointment having been disapproved by the Commission on Appointments of the National Assembly, neither can he claim to continue occupying the office conferred upon him by said new appointment, having ipso jure ceased in the discharge of the functions thereof.

Wherefore, the petition for quo warranto instituted is denied and the same is dismissed, with costs to the petitioner. So ordered.

Avanceña, C. J., Abad Santos, Imperial, and Concepcion, JJ., concur.

CONCURRING IN THE RESULT

LAUREL, J.:

I do not subscribe to the application of the doctrine of estoppel in this case. The ratio decidendi of the majority is found in the following paragraph of their opinion:

"The rule of equity, sanctioned by jurisprudence, is that when a public official voluntarily accepts an appointment to an office newly created or reorganized by a law,—which new office is incompatible with the one formerly occupied by him—, qualifies for the discharge of the functions thereof by taking the necessary oath, and enters into the performance of his duties by executing acts inherent in said newly created or reorganized office and receiving the corresponding salary, he will be considered to have abandoned the office he was occupying by virtue of his former appointment (46 Corpus Juris, 947, sec. 55), and he can not question the constitutionality of the law by virtue of which he was last appointed (11 American Jurisprudence, 166, par. 121; id., 767, par. 123). He is excepted from said rule only when his nonacceptance of the new appointment may affect public interest or when he is compelled to accept it by reason of legal exigencies (11 American Jurisprudence, 770, par. 124)."

To arrive at the conclusion reached, three important legal principles are invoked and applied: (a) Incompatibility of public offices; (b) abandonment of public office; and (c) estoppel. As necessary predicates for the application of the principle of estoppel reference has to be made to the doctrines of incompatibility and abandonment of public offices: "Hence, there is incompatibility between the two appointments and, consequently, in the discharge of the office conferred by each of them, resulting in the absorption of the former by the latter. In accepting this appointment and qualifying for the exercise of the functions of the office conferred by it, by taking the necessary oath, and in discharging the same, disposing of both judicial and administrative cases corresponding to the Courts of First Instance of Manila and of Palawan, the petitioner abandoned his appointment of June 2, 1936, and ceased in the exercise of the functions of the office occupied by him by virtue thereof." (Underlining mine.) Thus runs the decision of the majority of my brethren. Frankly, I do not see how the doctrine of incompatibility of public offices could have any application here. If a judge of the Court of First Instance may be a judge of one or more provinces, there can be no objection in principle to his being judge of one or more districts, if the constitution or the law authorizes it. It should be observed that incompatibility in law is not physical impossibility but inconsistency in the functions of the two public offices concerned. In the language of Judge Folger, "where one

office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant; there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word, in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other." (People vs. Green, 58 N. Y., 295, 304.) If the law as an expression of public policy prohibits the acceptance by a public officer of any office other than that which he holds, it is not a case of incompatibility but of legal prohibition. Acceptance of an incompatible office should be distinguished from acceptance of a forbidden office. (Cf. sec. 18, Jones Law; sec. 8, Art. VI, Philippine Constitution.) As to abandonment, in order that official relations may be terminated thereby, the circumstances must be such as clearly indicate an absolute relinquishment. I find nothing in the conduct of the petitioner indicative of clear intention to abandon the particular office involved and its duties and emoluments. On the contrary, he appears to have clung to the office, until forced to vacate it.

A fortiori, the doctrine of estoppel is inapplicable. The petitioner, before the approval of Commonwealth Act No. 145, was judge of the Court of First Instance of Manila, fifth sala, Ninth Judicial District. On the same day that the Act was approved he received his ad interim appointment for the new Fourth Judicial District established by Commonwealth Act No. 145, which district comprises not only Manila but also the Provinces of Rizal and Palawan. The appointment was made as well in the case of the petitioner as in other cases to avoid a break of continuity in the performance of judicial functions. The petitioner accepted the appointment and proceeded to discharge his duties as judge of the reorganized district in the honest belief that enlargement was all that was done to his old district. I express the opinion that the conduct of the petitioner does not warrant the application of the principle of estoppel or the invocation of the maxim that "He who hath committed iniquity shall not have equity." I am not prepared to say of the petitioner that he has performed what Lord Coke would call "an act which stoppeth or closeth up his mouth to allege or plead the truth." The doctrine of estoppel is inherently founded on equity and its application should not be predicated on strictly legal principles.

I do not see much utility in referring to adjudicated cases on this point as hardly any one of them tallies with the facts of the present case. I should observe, however, that in applying the doctrine of estoppel we should not overlook the significant fact that the principle originally arose almost entirely in relation to transfers of property although it has now come to be applied to a variety of legal situations. From the point of view of legal and somewhat arbitrary classification of the Anglo-American law, the principle invoked and applied is the equitable estoppel, otherwise known as estoppel in pais. As such, it is, according to Bigelow, estoppel by conduct, which is said to have its foundation in fraud, considered in its general sense. (Bigelow, Estop., secs. 437-439.) Upon the other hand, I have a very serious doubt as to whether the petitioner,—on the hypothesis that the question involved is his security of tenure under the Constitution—could by acquiescence or consent be precluded from raising a question of public interest. Security of tenure is certainly not a personal privilege of any particular judge. From this point of view it cannot be said that his remaining silent when he ought to have spoken debars the petitioner from speaking when conscience requires him to be silent (10 R. C. L., par. 21).

The petitioner in his vigorous and impassioned plea asks us to vindicate the independence of the judiciary and uphold the constitutional mandate relative to the security of tenure of judges, embodied in section 9 of Article VIII of the Constitution. He claims that "Commonwealth Act No. 145 is unconstitutional because the regrouping of the provinces into nine judicial districts as therein provided for was effected by the National Assembly without constitutional authority." Upon the other hand, the Solicitor-General directs our attention to the power of the legislature over courts inferior to the Supreme Court, conferred by section 1 of Article VIII of the Constitution. I think the constitutional issue thus squarely presented should be met courageously by the court, instead of applying

to the petitioner the doctrine of estoppel which, in my humble opinion, is entirely inapplicable. The life and welfare of this government depends upon close and careful observance of constitutional mandates. For this reason, in clear cases, this court should not hesitate to strike down legislative acts in conflict with the fundamental law. This court is perhaps the last bulwark of constitutional government. It shall not obstruct the popular will as manifested through proper organs. It will adapt itself to the needs of an ever-expanding present and face the future with a clear insight into economic and social values. It will keep itself alive to the dictates of national policy. But, in the same way that it cannot renounce the life breathed into it by the Constitution, so may it not forego its obligation, in proper cases, to apply the necessary corrective so that, in the very language of this court, "the course of Government may be directed along constitutional channels" (*Angara vs. Electoral Commission* [1936], 35 Off. Gaz., p. 23), or its return to them may be accelerated.

I am of the opinion that Commonwealth Act No. 145 in so far as it reorganizes, among other judicial districts, the Ninth Judicial District, and establishes an entirely new district comprising Manila and the provinces of Rizal and Palawan, is valid and constitutional. This conclusion flows from the fundamental proposition that the legislature may abolish courts inferior to the Supreme Court and therefore may reorganize them territorially or otherwise thereby necessitating new appointments and commissions. Section 2, Article VIII of the Constitution vests in the National Assembly the power to define, prescribe and apportion the jurisdiction of the various courts, subject to certain limitations in the case of the Supreme Court. It is admitted that section 9 of the same article of the Constitution provides for the security of tenure of all the judges. The principles embodied in these two sections of the same article of the Constitution must be coordinated and harmonized. A mere enunciation of a principle will not decide actual cases and controversies of every sort (*Justice Holmes in Lochner vs. New York*, 198 U. S., 45; 49 Law. ed., 937).

I am not insensible to the argument that the National Assembly may abuse its power and move deliberately to defeat the constitutional provision guaranteeing security of tenure to all judges. But, is this the case? One need not share the view of Story, Miller and Tucker on the one hand, or the opinion of Cooley, Watson and Baldwin on the other, to realize that the application of a legal or constitutional principle is necessarily factual and circumstantial and that fixity of principle is the rigidity of the dead and the unprogressive. I do say, and emphatically, however, that cases may arise where the violation of the constitutional provision regarding security of judicial tenure is palpable and plain, and that legislative power of reorganization may be sought to cloak an unconstitutional and evil purpose. When a case of that kind arises, it will be the time to make the hammer fall and heavily; But not until then. I am satisfied that, as to the particular point here discussed, the purpose was the fulfillment of what was considered a great public need by the legislative department and that Commonwealth Act No. 145 was not enacted purposely to affect adversely the tenure of judges or of any particular judge. Under these circumstances, I am for sustaining the power of the legislative department under the Constitution. To be sure, there was greater necessity for reorganization consequent upon the establishment of the new government than at the time Acts Nos. 2347 and 4007 were approved by the defunct Philippine Legislature, and although in the case of these two Acts there was an express provision providing for the vacation by the judges of their offices whereas in the case of Commonwealth Act No. 145 doubt is engendered by its silence, this doubt should be resolved in favor of the valid exercise of the legislative power.

I, therefore, concur in the result.

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