

MANUEL S. RUSTIA, ET AL., PLAINTIFFS-APPELLEES, VS. AGUINALDO & AGUINALDO, DEFENDANT-APPELANT.

G.R. No. 48928. September 05, 1946

Ponente: FERIA, J.

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FERIA, J.:

This is a case originally instituted in the Court of First Instance of Manila by several plaintiffs, among them George Moore, who seek to recover from the defendant corporation the reasonable value of their respective shares of stock as of October 31, 1939, under Sec. 17-1/2 of the Corporation Law, on the ground that the defendant corporation Aguinaldo and Aguinaldo has changed its main purpose over the objection of the plaintiffs.

The Court of First Instance rendered its decision ordering the defendant to pay each and every one of the plaintiffs the respective amounts set forth in the judgment.

The defendant corporation appealed from the decision of the Court of First Instance to this Supreme Court. During the pendency of the appeal, the Supreme Court in its resolution dated Sept. 3, 1943, suspended, the final disposal of the appeal as regards George Moore. Said resolution reads as follows:

"George Moore, one of the plaintiffs in G.R. No. 48928, Manuel S. Rustia, et al., plaintiffs-appellees, v. Aguinaldo & Aguinaldo, defendant-appellant, being an American, the final determination of this case is hereby suspended, unless the parties concerned comply with the provisions of Instruction No. 28 of May 13, 1942, issued by the Director General of the Japanese Military Administration."

On March 31, 1944, the Supreme Court affirmed the decision of the Court of First Instance with the only modification that the value of plaintiffs' shares shall be assessed by the appraisers in accordance with law, that is, that the plaintiffs and the defendant corporation should appoint their respective appraisers, who shall choose a third appraiser, and the three of them shall determine the value of plaintiffs' share in accordance with the procedure outlined in Sec. 17-1/2 of the Corporation Law.

On Nov. 14, 1945, the attorney for Moore filed a petition in this Court praying that the said decision of the Supreme Court be extended to include George Moore as one of the original plaintiffs-appellees. The attorney for the defendant, upon whom a copy of said motion was duly served, having filed no answer after he was given twice an extension of the period within which to file it, the case was considered submitted to this Court for decision. .

After considering the motion, we find that the action of plaintiff and appellee George Moore is based on the same cause and involves the same questions of fact and law as the action of the other plaintiffs and appellees; that the decision rendered on March 31, 1944, by the Supreme Court in favor of all the other plaintiffs-appellees is correct and in conformity with the facts and the law of the case; and that if the said decision did not include George Moore, as one of the plaintiffs-appellees, and the termination of the case as to him was suspended, it was because

he was an American.

Wherefore, the decision of the Court of First Instance ordering the defendant corporation to pay plaintiff George Moore the reasonable value of his shares of stock as of Oct. 31, 1939, is affirmed, with the only modification that the said value shall be fixed by the three appraisers chosen or appointed in accordance with Sec. 17-1/2 of the Corporation Law.

So ordered.

Moran, Paras, Pablo Bengzon, and Briones, JJ., concur.

CONCURRING OPINION

PERFECTO, J.:

We concur in the decision rendered in accordance with the petition of plaintiff George Moore dated November 14, 1945. In concurring, we do not mean to change our position as to the nullity of judicial processes during Japanese occupation, as expressed in our dissenting opinion in *Co Kim Cham vs. Tan Keh*, 41 O.G. 779, and in our concurring opinion in *Peralta vs. Director of Prisons*, 42 O.G. 198. Our vote is based primarily on the fact that there is a virtual agreement between the parties when defendant-appellant did not object to nor oppose the petition, and this conclusion is strengthened by the allegations made in plaintiffs-appellees' petition dated August 15, 1946, to the effect that on principle the parties have reached an amicable settlement to be carried into effect as soon as this case is remanded to the lower court.

DISSENTING OPINION

HILADO, J.:

I dissent. The decision of the majority, although not so expressly stated therein, in recognizing in effect validity in the resolution of the Japanese-sponsored Supreme Court dated September 3, 1943» as well as the decision of the same Court dated March 31, 1944, is necessarily predicated upon the doctrine, from which I also dissented, in G.R. No. L-5, *Co Kim Cham vs. Tan Keh*, 41 O.G. 779. Briefly, this dissent is based upon: (1) the reasons set forth in my dissent, both from the main decision and from the resolution on the motion for reconsideration, in the case just cited; (2) those set forth in my concurring opinion in G.R. No. L-49, *Peralta vs. Director of Prisons*, 42 O.G. 198; (3) those set forth in my concurring opinion in G.R. No. L-22, *People vs. Benedicto Jose*, 42 O.G. 697; (4) those set forth in my dissent in G.R. No. L-6, *Alcantara vs. Director of Prisons*, 42 O.G. 480; (5) those set forth in my concurring opinion in G.R. No. 49158, *Castro vs. Court of Appeals*; and (6) the doctrine in *Jones vs. U.S.*, 137 U.S. 202, 34 Law ed. 691, 696, and in the cases therein cited, that:

"Who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects, of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances. (*Gelston vs. Hoyt*, 16 U.S. Wheat, 246, 324[4:381; 401]; *United States vs. Palmer*, Id, 610 (471); the *Divina Pastora*, 17 U.S. 4 Wheat. 52 [4:512]; *Foster vs. Neilson*, 27 U.S. 2 Pet. 253; 307, 309 [7-415, 433, 434]; *Keen vs. M'Donough*, 33 U.S. 8 Pet. 308 [8:955]; *Garcia vs. Lee*, 37 U.S. 12 Pet. 511; 520 [9:1176]; *Williams v. Suffolk Ins. Co.* 38 U.S. 13

Pet. 415 [10:226]; United States vs. Yorba, 68 U.S. 1 Wall. 412; 423 [17:635; 632]; United States vs. Lynde, 78 U.S. 11 Wall, 632, 638 [20:230, 232]. It is equally well settled in England. The Pelican. Edw. Adm. Appx. D; Taylor vs. Barclay, 2 Sim. 213; Emperor of Austria vs. Day, 3 DeG. F. & J. 217, 221, 233; Republic of Peru vs. Peruvian Guano Co. L.R. 36 Ch. Div. 489, 497; Republic of Peru vs. Dreyfus, L.R. 38 Ch. Div. 348, 356, 359". (137 U.S. 213, 34 Law ed. 696).

A more extended discussion of the above reasons will appear in my dissent in G.R. No. L-313, Ibañez vs. Hernandez, upon the delivery of the majority opinion therein.

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