

A. V. BRODETT, SANTOS CARMELO, G. NARCISO AND JOSE ELORIAGA, PETITIONERS, VS. MARIANO L. DE LA ROSA, JUDGE OF FIRST INSTANCE OF MANILA, AND SABINA S. VDA. DE ESCALER, RESPONDENTS.

G.R. No. 783. December 18, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

On July 24, 1946, a complaint for ejectment was filed in the Municipal Court of Manila in the case of Sabina S. de Escaler vs. Dan Zamora. Decision was rendered against defendant, who appealed to the Court of First Instance of Manila, where, after the trial, a decision was rendered on December 6, 1946, in accordance with the terms of a written stipulation agreed upon by the parties. Under the stipulation, the parties renounced their right to appeal from the decision and defendant waived whatever rights he may have by virtue of Commonwealth Act No. 689, and said defendant was allowed to remain in possession of the premises located at 289 San Rafael, Manila, only until May 31, 1946.

It appearing that the four petitioners were occupying also the premises with the consent of Dan Zamora, they were ordered by the lower court to show cause why they should not be ejected, as the defendant himself, from the premises, and at a hearing, upon the lower court's suggestion that an amicable settlement be entered into between the petitioners and the owner, they agreed that petitioners will vacate the premises on August 2, 1946, and to give them facilities to said effect, it was agreed that, if they could not find another house to transfer to, they may, occupy plaintiff's house at Sotu 8, Quezon City, at a monthly rental of P250.

The lower court approved the agreement and accordingly issued on July 16, 1946, an order to make it effective.

About one week later, on July 22, 1946, petitioners filed a motion praying that the order of July 16, 1946, be set aside upon the following grounds: That the court has no jurisdiction on petitioners' persons; that the order denied petitioners of the constitutional due process of law; and that respondent Judge Mariano L. de la Rosa has not been appointed in accordance with the Constitution of the Republic of the Philippines, and, therefore, has no authority to issue the order.

The motion was denied and petitioners come to us to secure relief against the lower court's order of July 16, 1946.

Respondents alleged, and petitioners did not deny, that in the complaint for ejectment plaintiff prayed that not only the defendant be ordered to vacate the premises, but also all others claiming under him; that petitioners were aware of the filing of the complaint as they are closely related with Dan Zamora, A. V. Brodett as father-in-law, S. Carmelo as brother-in-law, and G. Narciso and Jose Eloriaga as close friends; that upon expiration on May 31, 1946, of the period agreed upon in the written agreement of December 6, 1945, which is embodied in the decision of the same date, plaintiff filed on June 6, 1946, a petition for execution which was granted on June 18, and served on the defendant on June 21; that defendant filed on June 21, a petition praying for

an additional period of three months to vacate the premises, to which plaintiff filed an opposition, notwithstanding which, the lower court granted defendant additional ten days within which to vacate the premises in an order issued on June 29; that on May 29 petitioners knew that the defendant was ordered to vacate the premises, and they requested, by letters sent to plaintiff, to grant them reasonable time to vacate the premises; that petitioners are subtenants, relatives, friends of evacuees who have entered into the possession of the premises through defendant's consent without the knowledge and intervention of plaintiff, and being successors of or privies to defendant Zamora, they are likewise bound by the decision to vacate, a suit for unlawful entry and detainer not being a procedure purely in personam but quasi in rem; that petitioners are simply possessors in bad faith, who, without any rights whatever, would abuse the property rights of plaintiff and nullify court proceedings.

Under the undisputed facts in this case, petitioners, being near relatives and friends of defendant Dan Zamora who allowed them to reside in the premises as his house guests, occupy the same legal position of petitioner Alonzo in the case *De la Cruz, vs. Roxas* 75 Phil., 457 a case where the facts are similar to those in this case.

In said case this Court declared:

"Francisco de la Cruz, the real tenant, has left the premises already. His house guest, petitioner Alonzo, from the point of view of owner Quesada, is no more than a mere intruder. If he has any right to stay in the house that right was subsidiary to that of tenant Francisco de la Cruz, he being a mere house guest of the same. After Francisco de la Cruz left the house, Alonzo has absolutely no legal standing to remain in the house." (P. 460.)

In one sense, petitioners' position is even worse because, upon knowing that Dan Zamora was to be ousted from the premises, they wrote letters to plaintiff requesting for extension of time to remain in the house, as can be seen in Annex 6 of respondents' answer, and later they personally appeared in the lower court before which they entered into an amicable agreement in which they committed themselves to vacate the premises on August 2, 1946, and if they cannot find another house to transfer to, to occupy another house of plaintiff located at Sotu 8, Quezon City.

Petitioners cannot complain of having been deprived of the constitutional protection of due process of law. In the first place, they being in fact, privies of defendant Dan Zamora, in subsidiary or accessory position in regard to him, they cannot claim separate and independent process than the one duly accorded to their principal, and, in the second place, after they had communicated by letter with plaintiff, asking her time for them to remain in the premises, they voluntarily appeared before the lower court at the hearing to determine the question why petitioners should not be ousted from the property, and at said hearing they entered into an express agreement with plaintiff to vacate the house on August 2, 1946, and accepted the facility offered by plaintiff that, in case they could not find another house to transfer to, they may occupy plaintiff's house at Sotu 8, Quezon City, at a monthly rental of P250, and the lower court approved the agreement in its order of July 16, 1946. When two parties appear before a court of justice, voluntarily submit to its jurisdiction, and secure its approval to an agreement freely entered into by said parties to settle a dispute between them, it would be unreasonable for any one of the parties to complain that he was denied the protection of due process of law. The parties having settled their dispute by agreement and secured the court's approval to said agreement, they enjoyed benefits that cannot be improved by those that can legally be accorded to them by the most elaborate and exacting judicial procedure.

The standard set by the definition of due process of law is the one which hears before it condemns, proceeds upon inquiry, and renders judgment only after trial, and that every citizen shall hold his rights under the protection of the general rules which govern society, the classical one in the *Dartmouth College* case (4 Wheaton, U. S., 518, 581), the very authority cited in the memorandum of petitioners' counsel, in petitioners' case has been fully met, because they were heard by the lower court which proceeded upon inquiry and rendered judgment after a hearing, in which petitioners were accorded all opportunities to be heard and, in fact were heard, to the extent that they

took full advantage of the proceedings to secure the court's approval to an amicable agreement which, at the time, petitioners themselves have considered advantageous or, at least, fair. There is no doubt that petitioners were accorded the full protection of the general rules which govern society.

The last question raised by petitioners is the one concerning the validity of the actuations of Judge De la Rosa, whose authority they impugn because said officer was appointed before July 4, 1946, under the Commonwealth Government and he was not reappointed by the President after the proclamation of independence.

Petitioners failed to be more explicit in the exposition of their theory, but from their allegations they seem to insinuate that, because Judge De la Rosa was appointed under the Commonwealth Government, the authority of his appointment is not derived from what they call the "Constitution of the Republic of the Philippines," implying that the Republic has its own Constitution, separate and independent from the Constitution in effect during the Commonwealth. The theory is wrong. The Constitution under which the Republic exists and is functioning is but the same under which the Commonwealth existed and has been functioning. ^The Convention drafted the "Constitution of the Philippines," the title it gave to the document, for both the Commonwealth and the Republic as can clearly be seen in Article XVIII thereof which is as follows:

"SECTION 1. The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines."

There being absolutely no reason to disturb the order of the lower court dated July 16, 1946, ordering petitioners to vacate the premises in question located at 289 San Rafael Street, Manila, on August 2, 1946, petition denied and the preliminary injunction issued by this Court on September 2, 1946, is dissolved, with costs against petitioners.

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

CONCURRING

FERIA, J.:

The petitioners impugn the validity of the judgment of the respondent Judge on the ground that, as said respondent was not reappointed by the President of the Republic of the Philippines, he must have ceased to be judge upon the proclamation of the independence of the Philippines. Presumably the petitioners' contention is based on the legal maxim of statutory construction—*expressio unius est exclusio alterius*, and the provision of our Constitution relating to the officers of the Commonwealth who should continue in office after the proclamation of our independence, which says:

"The officials elected and serving under this Constitution shall be constitutional officers of the free and independent Government of the Philippines and qualified to function in all respects as if elected directly under such Government, and shall serve their full terms of office as prescribed in this Constitution."

The Philippine Independence Act promulgated by the Congress of the United States on March 24, 1944, provides in its section 2 (b) (2) as follows:

"(b) The constitution (of the Philippines) shall also contain the following provisions, effective as-of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided;

(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of the Act shall be constitutional officers of the free and independent Government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution."

The last quoted provision which is incorporated in paragraph or section 1 (2), Article XVII, of the Constitution, constitutes a limitation on the power of the framers of our Constitution to provide for the continuance or cessation of the officers therein mentioned. As they were not at liberty to insert or not said provision, its inclusion in our Constitution can not be considered as the expression of their intention that the officers therein mentioned shall continue as constituted officer of the free and independent government of the Philippines. Consequently, the maxim *expressio unius est exclusio alterius*, which is based upon the rules of logic and the natural working of the human mind and serve as a guide in determining the probable intention of the makers of laws and constitutions in expressly mentioning some and not others, can not be applied or invoked in support of the contention that, from the inclusion of said provision it may be inferred that it was the intention of the delegates of the Constitutional Convention which drafted our Constitution that appointive officers and employees and other elective officials should cease or not continue in office upon the proclamation of our independence.

On the other hand, as the framers of our Constitution were free to provide in the Constitution for the cessation or continuation in office of all appointive officers and employees and all other elective officers under the Commonwealth, if it were their intention that they should not continue or cease, they could and should have so expressly provided; but they did not do so. On the contrary, the Constitution prescribes that "The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years or become incapacitated to discharge the duties of their office" (section 9, Article VIII) ; that "The Auditor General shall hold office for a term of ten years and may be reappointed" (section 1, Article XI) ; that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law" (section 4, Article XII).

There is no doubt that the Constitution of the Philippines is a Constitution for the Commonwealth and the Republic. Article XVIII thereof provides that "The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of the Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines." The only provisions of the Constitution not applicable to the Commonwealth are those of Article XVII which became effective upon the declaration of the independence of the Philippines; and the provisions of the Constitution not applicable to the Republic of the Philippines are those of Article XVI, or the transitory provisions from the former colonial or territorial to the Commonwealth Government.

The Constitution, referring to the transition from the former Philippine Government to the Commonwealth, provides in its section 4, Article XVI, that "All officers and employees of the Government of the Philippine Islands shall continue in office until the Congress shall provide otherwise, but all officers whose appointments are by this Constitution vested in the President shall vacate their respective offices upon the appointment and qualification of their successors, if such appointment is made within a period of one year from the date of the inauguration of the Commonwealth of the Philippines." Undoubtedly, the framers of our Constitution deemed it necessary to so provide in order to avoid any doubt about their authority to continue in office; because the said officers and employees were appointed by authority of the People of the United States represented by the Congress and the President of the United States, or the Jones Law; while the officers and employees of the Commonwealth of the Philippines were to be appointed by authority of the People of the Philippines in whom the sovereignty resides and from whom all government authority emanates, according to section 1, Article II of the

Constitution of the Philippines.

But there is no similar provision in the Constitution covering the transition from the Commonwealth to the Republic. Evidently, it was not deemed necessary to provide expressly in the Constitution for the continuation of all the officers and employees of the Commonwealth Government, because they had to continue, in the absence of an express provision to the contrary, for they are officers and employees appointed by authority of the People of the Philippines, since the Commonwealth as well as the Republic are governments established by the same Filipino people in the exercise of their sovereignty, limited under the Commonwealth and complete or absolute after the proclamation of our independence.

That the Commonwealth of the Philippines was a sovereign government, though not absolute but subject to certain limitations imposed in the Independence Act and incorporated as Ordinance appended to our Constitution, was recognized not only by the Legislative Department or Congress of the United States in approving the Independence Law above quoted and the Constitution of the Philippines, which contains the declaration that "sovereignty resides in the people and all government authority emanates from them" (sec. 1, Art. II), but also by the Executive Department of the United States. The late President Roosevelt in one of his messages to Congress said, among others, "As I stated on August 12, 1943, the United States in practice regards the Philippines as having now the status as a government of other independent nations—in fact all the attributes of complete and respected nationhood." (Congressional Record, Vol. 29, part 6, page 8173.) And it is a principle upheld by the Supreme Court of the United States in many cases, among them in the case of *Jones vs. United States* (137 U. S., 202; 34 Law. ed., 691, 696), that the question of sovereignty is "a purely 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."

A contrary construction, that is, that all appointive officers and employees of the Government of the Commonwealth, from the Chief Justice of the Supreme Court to an office messenger, had ceased ipso facto or automatically upon the proclamation of the independence of the Philippines, would lead to enormous public inconvenience, a complete paralyzation of all the functions of the Government, since it would necessarily require a considerable period of time to appoint the new officers and employees in their place. And if they were to hold over or continue in office until their successors are appointed, as there is no limitation provided in the Constitution as to the time within which the appointing powers may or must appoint their successors, a sort of *Damocles'* sword would be left hanging and ready to fall over the heads of said officers and employees for an indefinite period of time, to the detriment of the proper discharge of their functions and the independence that is to be expected from judges in the performance of their duties, essential for a good and clean government.

In view of all the foregoing, it is evident that the respondent judge had the constitutional right to continue acting as judge after the proclamation of the Philippine independence, and that, therefore, the judgment rendered by him in the present case is that of a judge *de jure* and valid.

I concur in the majority opinion.

CONCURRING

HILADO, J.:

I concur in the foregoing opinion of the majority written by Mr. Justice Perfecto, saving only that part thereof which considers a suit for unlawful entry and detainer as a procedure *quasi in rem*, which I am not yet prepared to subscribe to. As to the procedure followed by the Court of First Instance when it, by its order of July 16, 1946,

summoned petitioners to appear to show cause why they should not be ejected from the premises in question, approved the compromise agreement submitted by the parties to it upon the same date of petitioners' appearance, and thereafter proceeded against the said petitioners as described in the majority opinion, I find ample ground and justification therefor in Rule 124, section 6, providing:

"SEC. 6. Means to carry jurisdiction into effect.—When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by these rules, any suitable process or mode of proceeding may be adopted which appears most conformable to the Epirit of said rules."

The Court of First Instance possessing by law jurisdiction over the case, it had the power by virtue of the afore-quoted provision of the Rules of Court to employ all auxiliary writs, processes and other means necessary to carry said jurisdiction into effect, the said order of July 16, 1946, and the procedure already referred to being, in my opinion, among the "auxiliary writs, processes and other means" mentioned by said provision. And pursuant to the power and authority granted by the latter part of the same section, I am further of opinion that the Court of First Instance adopted a mode of proceeding "which appears most conformable to the spirit of said rules," namely, that of liberality of construction in order to assist the parties in obtaining just, speedy and inexpensive determination of their controversies. (Rule 1, section 2.) In a word, the auxiliary writs and procedure thus employed by said court were in aid of the execution of its judgment against the defendant tenant, Dan Zamora.

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