COURT SESSIONS OUTSIDE THE REGULAR PLACE FOR HOLDING TRIALS

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HISTORICAL BACKGROUND

The right of a judge of a Court of First Instance to hold trial at a place other than the regular place of trial of the court may be traced back as early as 1901 by the passage of Act No. 136 by the Philippine Commission. Act No. 136 is an Act providing for the organization of courts in the Philippine Islands. Section 51 of this Act provides that "any judge of a Court of First Instance may be ordered by the Supreme Court to hold a term or part of a term of any court of First Instance, although not in the district which properly appertains to his jurisdiction, whenever in the opinion of the justices of the Supreme Court such assignment is necessary by reason of absence, illness or disqualification of a judge who would properly preside in such court, or whenever, by reason of an unusual amount of business, the services of an additional judge may be needed in any district or province." The effect of any judgment, order, and proceeding, of the judge so assigned is stated in the second paragraph of the same section which says that "the judgments, orders, and proceedings of the judge so assigned to another province shall equally be effective as if the regular judge of the province in which the court is held had presided." By section 52 of the same Act a judge of any court of First Instance may hold the court of First Instance in any province at the request of the judge thereof; and upon the request of the Chief Executive it shall be his duty to do so; and in either case, the judge holding the court shall have the same power as the proper judge thereof.

Section 3 of this Act provides for the appointment by the Civil Governor with the advise and consent of the Commission of four judges in addition to the number of judges authorized by Acts No. 136. The judges so appointed may be required to perform the duties of judge of court of First Instance of any province in the Philippine Islands or of the City of Manila when directed in writing to do so by the Civil Governor in which case he acts, proceedings, and judgments shall be of the same validity as though he were the regular judge of the Court of First Instance in the City of Manila or in the province in which he shall perform such duties.

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Subsequently, the Philippine Commission passed Act No. 396 amending Act No. 136. And section 4 of that Act provided that any judge of a court of First Instance of the City of Manila, may be appointed from one judicial district to another by order of the Civil Governor, with the advice and consent of the Philippine Commission. The effect, as provided by this section was that any judge so transferred shall, upon such transfer, cease the performance of judicial duties in the district in which he was originally appointed, and shall be the regular judge thereafter in the judicial district to which he was so assigned. The judge so transferred shall also be entitled to the compensation of a judge of the Court of First Instance of the district to which he is assigned instead of that appertaining to the district to which he was originally appointed. Unlike section 51 of Act No. 136 which purports to make the transfer temporary, section 4 of Act No. 396 is in effect a new and absolute transfer.

However, by the passage of Act No. 1153, certain duties in relation to the Bureau of Justice required by law to be performed by the Civil Governor were transferred to and performed by the Secretary of Justice and Finance, among which were to request or direct a judge of any Court of First Instance to hold the court of First Instance in any province as provided by section 52 of Act No. 136 (Section 1, a) and to direct, in writing, any judge at large to perform the duties of a judge of court of First Instance in any province in the Philippine Islands or in the City of Manila, as provided by Section 3 of Act No. 396, (Sec. 1, a).

Section 1 (h) authorized the Secretary of Finance and Justice to issue calls upon a judge at large of the Court of First Instance assigned to vacation duty to assist any district to dispose of interlocutory matters as provided by Section 5 (e) of Act No. 136 as amended by Act 867 and letter (i) of the same section empowered the Secretary to direct, when in his judgment the emergency shall require, any judge assigned to vacation duty to hold during the vacation period a special term of court in any district, there to hear civil and criminal cases and enter final judgment thereon as provided by section 5 (f) of Act No. 136 as amended by Act 867. The application of section 1 of Act 1153 was decided in the case of U. S. vs. Jose Diza y Tan Blanco, 4 Phil. 325, and it was also there decided that the words "special term" includes terms held at places other than those designated by law for the holding of regular terms.

However, by the passage of Act No. 2711, known as the Administrative Code, Acts Nos. 396 and 1153 were repealed in their entirety.

PRESENT LAW ON THE SUBJECT

Section 155 of the Administrative Code says that, "if the public interest and the speedy administration of justice so require, a judge of first instance may be detailed by the Secretary of Justice to temporary duty, for a period which shall in no case exceed six months in a district or province other than his own for the purpose of trying all kinds of cases excepting criminal and election cases.

When exercised. The necessity of the temporary assignment to another district is stated by the law itself, "if the public interest and the speedy administration of justice so required." Evidently the phrase was inspired by a fundamental legal maxim that "justice delayed is justice denied." But, however beneficial the law would appear in serving the public interest and rendering just and speedy justice then to all, it is not free from criticism. A few days ago news was published in the newspapers that the courts of Tarlac was closed because of the fact that the judge appointed never came because he was appointed temporarily elsewhere; and so was the court of Ilocos Norte because Judge Ocampo was temporarily designated to Tarlac and nobody was appointed to take his place and the pending cases in Ilocos Norte must necessarily have increased. So while the public interest, it may be said, and speedy administration of justice, are served in one place while at the same time denied to or in another.

How and by whom exercised. The transfer is made by means of an administrative order and is exercised by the Secretary of Justice or in his absence by the Undersecretary. A typical illustration of assignment to another district is shown below:

Manila, March 6, 1933

Administrative Order
No. 56

In the interest of the administration of justice the Honorable Ceferino Hilario, Judge of the Twenty-Sixth Judicial District, is hereby authorized and instructed to hold court in the Province of Laguna, beginning March 9, 1933, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter final judgment therein.

For and in the absence of the Secretary:

Secretary of Justice

QUARTERS WHERE COURT SESSION MUST BE HELD

Terms and sessions of courts are ordinarily held at the courthouse, but it is not in all cases essential to the validity of a court proceedings that the court be held in the house or rooms where its sessions are usually held and if there is reason for the change, court may properly be held at any place within the county seat. Accordingly, where the courthouse is undergoing repair or is otherwise unfit for occupancy, the court may meet elsewhere, and in the case of the destruction of the court-house by fire or otherwise, temporary quarters may be obtained and used, or where a session of the court is required to be held at a county seat where there is no courthouse, the court may meet in any suitable place within the county seat. (15 C. J. 898, 899).

Court may be held at a place other than the county seat by reason of the incursion of the public enemy, which renders it impossible and excessively dangerous to hold court at the county seat. The law which provides the holding of court at the county seat is construed as having reference only to ordinary circumstances in time of peace and did not prohibit holding court in time of war in other places. (Sevier vs. Teal, 16 Texas, 372).

Usage and custom may also be a ground for holding court at a place other than that provided for by law, thus the court in the case of In re Allison, 13 Colo. 525, 10 L. R. A. 790, said that where the trial was held at a town 3/4 of a mile distant from another town, which was the lawful county seat, but the former place has been, for twelve years regarded as the county buildings, offices and records, and courts were kept there, the trial was valid. There was in this case a *de facto* removal of a county seat. The same principle was laid down by the Supreme Court of Indiana in the case of White County Commissioners vs. Guin, (136 Ind. 562, 22 L. R. A. 402) where it said that where the clerk, sheriff, and judge of a circuit court assembled at the time appointed for holding said court, at the place within the county and within the county seat at said county, and there was no statute fixing the place for holding court, long acquiescence in the universal custom of courts to sit at county seats was equal to positive law requiring the court to be held at those places.

Duty to provide. Under Section 2102 (c) of the Administrative Code, it states that, "it shall, among other things, be the duty of the provincial board to provide a courthouse containing

a room or rooms suitable for the holding of court and for offices for the court officers, * * *."

Suitability of quarters. It is for the court to decide as to the suitability of the quarters and other equipments furnished to it. Thus, it was held in the case of Province of Tarlac vs. Gale, 26 Phil. 338, that, if the provincial officials furnish to a court a room which, in the judgment of the court, is clearly inadequate and its use would seriously interfere with the orderly and dignified administration of justice, the court may refuse to accept it, and on the refusal of the provincial officials to furnish accommodations which the court considers adequate, it has the power to procure them either directly by rent or by order the officials whose duty it is, under the law, to furnish them. The power lies with the judge, and with him alone, to determine ultimately what is really essential for the administration of justice.

However, the power to determine the suitability of the quarters does not mean that the judge can abuse that power and ask for luxurious quarters. What he should do under the circumstances is only to decide what is really necessary for the administration of justice. Judicious discretion should be observed. Happily, in this jurisdiction, we know of no judge who has ever abused his prerogative in this regard.

Object of holding court at the courthouse: The object of holding court at the courthouse where court session are usually held is for the purpose of obtaining certainty and to prevent a failure of justice to the parties concerned or affected not knowing the place of holding court. To allow the court unrestrictedly to hold court anywhere depending upon his own will or upon the will of one of the parties would result in a case of hide and seek and an ultimate miscarriage of justice. For, as the Supreme Court itself said, "no judge, however high his rank may be, is above or beyond the law which it is his high office to administer." The administration of the law is a matter of vital public concern and it is the duty of every judge to see to it that the public is not prejudiced thereby.

Effect of attending and taking part in a trial. Attending and taking part in a trial is a waiver of any objection to the adjournment of a court from a courtroom to another building.

Thus the case of U. S. vs. Lim Tui, 31 Phil. 504 where the accused was charged with illegal possession of opium and various pipes and other utensils used by opium smokers and the court during the progress of the case adjourned the trial to the prem-

ises where the contraband articles were seized and while there, conducted a brief examination of one of the witnesses, to clear up some obscure statements which had been made during the course of the trial and where counsel for the accused offered no objection whatever to the examination of this witness and cross-examined him on his testimony in chief the Supreme Court held that in the absence of any objection by counsel of any showing that the substantial rights of the accused were prejudiced by the proceedings there is no ground for reversal in the action of the court in this regard.

Similarly, in an earlier case, the case of U. S. vs. Mercado, 4 Phil. 304, the case was tried at the Bilibid Prisons probably because the accused, the complaining witness and nearly all the witnesses were confined as prisoners. The accused claimed that the trial was illegal because the judge was not authorized to hold court there and was therefore not a public trial. However, not having raised the question during the trial, the Supreme Court said that it was now too late for the accused to raise the question. The court did not decide what the affect would be had the accused raised this question on time. What would have been the effect if the accused questioned the right of the judge to try the case in Bilibid? We believe that in the absence of any showing that the substantial rights of the accused were prejudiced, the proceedings would be a mere irregularity not sufficient to constitute a ground for reversal.

Necessity for consent. In a county where there is a regular courthouse provided and used for the holding of courts, unless by the consent of the parties, the court has no authority to adjourn the court to a private house for the purpose of a trial; and if done, the court, so sitting has no jurisdiction. This holding, of course, has no reference to cases where the place of holding court is not suitable. (Moore vs. Chicago, R. Co., 93 Iowa, 484, 61. N. W. 992; Casey vs. Stewart, 60 Iowa 160, 14 N. W. 225). The danger to result from permitting the court, in the trial of the same, at the instance of a party, against the objections of the other, to leave the place provided by law for the holding of trials, and to go to another place is very obvious. But independent of questions of propriety, the law fixes the place for the holding of courts for trials, or determines how they are fixed, and when such places are left by the court, the authority of the court for the trial is not changed to the other place and the proceedings had therein are of no force and effect. (Funk vs. Carrol, 96 Iowa 158, 159, 64 N. W. 768. But court may ad-

journ to the house of a judge who is ill. (Bates vs. Sabin, 64, Vt. 511, 24 A. 1013.

Adjournment to house of witness to take testimony. In the case of Rex vs. Roger, 36 N. B. 1 33 L. R. A. 686, (footnotes), the court said that at a trial for a criminal offense the presiding judge has authority to order the court to be adjourned to a place in the county other than the courthouse for the purpose of taking the evidence of a person who is so ill as to be unable to leave his house, especially where the counsel on both sides consent. Evidently this is a wise rule especially where the testimony to be adduced is of a very important nature that there can be no just and fair determination of the case without having the testimony of such witness. A similar doctrine was followed in the case of Valenzuela vs. Carlos and Lopez de Jesus, 42 Phil. 428. In that case during the probatory period in an election contest, which extended over for more than a year, the judge at the request of one of the parties, held a session at a certain municipality other than the place appointed for holding the court, for the person of taking the testimony of witnesses, more than a hundred in number, who live in that municipality. It was held that the proof thus taken was properly used, it appearing that the adverse party had due notice of the session and was present during most of the time with his attorney for the purpose of cross-examining the witnesses.

But the official action of a court and a judge is invalid where the court adjourned to the chambers of the judge at the judge's office because the court was under the provision of the law required by law to be held at the courthouse. (Bennett vs. Cooper, 57 Barb. 642). And so is the official action of a judge and court invalid, where a will was presented to the probate court holder at W, and the court was adjourned to be held at the house of the decedent in G., and so public notice was given to the holding of the probate court at G., and that was not the place where the probate courts were to be held according to the statutes. The appearance at G, and entering on appeal could not give jurisdiction. (White vs. Riggs, 27 Maine 117). Therefore, where the provision of the statute indicates the place where the court must be held any action by the court or judge to the contrary is void and of no effect. But the regular judge may hold court in another room in the courthouse where another judge has been substituted for the trial of a particular case which is in progress in the regular court room. (Courtney vs. States, 5 Ind. app. 356, N. W. 135).

PRESUMPTION ON APPEAL

Where the trial court sat at some other place than the courthouse the presumption will obtain on appeal, in the absence of contrary showing, that it sat at the place provided for the purpose. Judges in performing their duties are bound by their solemn pledge when they take their oath of office to the honest and faithful performance of their duties thereof. When we consider the fact that courts are the instrumentalities which pass upon the validity or invalidity of acts over which they have jurisdiction, it is the more evident that judges will be careful in the performance of the duties assigned to them, so that their judgments, by reason of their defective procedure, will not suffer a reversal in case of appeal. What is more, judges more than anybody else are presumed to know where they should hold their court sessions. So, it needs a clear proof to the contrary that the judge failed to observe the mandate of the law.

IN CADASTRAL CASES

In cadastral cases the trial may be held at the place where the lands are located. Section 11 of Act No. 2259, the Cadastral Act, provides that the trial of the case may occur at any convenient place within the province in which the lands are situated or at such other place as the court, for reasons stated in writing and filed with the record of the case, may designate, and shall be conducted in the same manner as ordinary trials and proceedings in the Court of Land Registration and shall be governed by the same rules.

Purpose:—The purpose of holding trial at any place within the province in which the lands are situated is, as stated by the law, for convenience. It is evident that there can be no surer and better way of adjudicating cases of this nature than to hold trial at the place where the lands are situated. Taking into consideration the fact that during the adjudication of cadastral cases there are hundreds of applicants it would be very inconvenient to hold court at the courthouse where these applicants cannot be accommodated. The law has wisely provided for a remedy for such inconvenience.

CONCLUSION

In concluding this short treatise, the writer has come to the conclusion that the right of a judge to hold trial at a place other than the regular place of trial can only be exercised by virtue of an existing law or by reason of the existence of special causes justifying the same.