Recent Cases

Briefed by

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QUO WARRANTO WILL ISSUE ONLY IF PETITIONER IS THE GOVT. OR INDIVIDUAL WHO CLAIMS OFFICE USURPED.

This is an original petition for mandamus. The petitioners allege that they are members of the Municipal Board of Manila, having been elected in the general elections of 1947 to compose the 10 members thereof, their term expiring on Dec. 31, 1951; that only 1 vacancy in the board was created by the appointment of Eustaquio Balagtas in March 1949 as Director of Prisons, that on June 22, 1949, the President of the Philippines appointed the 3 respondents to fill the vacancy and the 2 additional positions created by Rep. Act No. 409, which act, increasing membership is unconstitutional because Sec. 5 of Art. VI of the Constitution authorizes Congress to apportion legislative districts throughout the Philippines by a general law and not by piecemeal legislation and at least 2 of the respondents are usurping privileges and duties exclusively pertaining to the petitioners and other members of the Board elected in 1947 because the appointment of the two increases the number of majority to constitute a quorum thereby depriving any 6 to do business inasmuch as the minimum number to constitute a quorum of 12 is 7, instead of 6.

HELD: "The exercise of the prerogative right of quo warranto is governed by Rule 68 of the Rules of Court...

"The present petition is not authorized by Sec. 6 because the petitioners do not claim to be entitled to the public office alleged to be unlawfully held or exercised by the respondents. As a matter of fact the petitioners allege that they are elected members of the Mun. Board and that their term of office will not expire until Dec. 31, 1951. They do not and cannot claim that the respondents have supplanted them. Their contention that they and the other elected members of the Board who are not parties to the case "have the absolute and exclusive right to exercise the prerogative and privileges and discharge of the duties of the office of members of said board" does not bring their case within the purview of sec. 6. Moreover such contention is untenable because if the elected councilors had the 'absolute and exclusive' right to the membership of the board, then no other person could become a member of the board even if vacancies should be created therein by law or by the death or resignation of an elected member during the 4 years term of office of the members, and that is untenable because the members are elected individually, each to fill one seat in the board and not collectively as a body to constitute the board.

"The mere fact that the membership of the board was increased from 10 to 12 and the quorum from 6 to 7 does not in any way diminish the rights and prerogatives of the individual petitioners as members of the board. Such increase does not result in the dimunition of the emolument or in the curtailment of the participation in the deliberation and of the vote of each of the petitioners as members of the board. The petitioners are bringing their action as individuals and not as a group or juridical entity recognized by law as having a corporate or col-

lective right to assert. As members of the Municipal Board, the 6 petitioners are not bound to vote solidly to a man on any measure or motion that may come before the board. They are supposed to express their individual opinions and cast their individual votes.

"If, as petitioners contend, Rep. Act 409, increasing the membership of the board is unconstitutional, a question which we cannot inquire into unless a group action is brought before us—the remedy available to them as well as to any other citizen is that provided for in sec. 4 of rule 68. The reason of the law is that a public office or a franchise is created or granted by law, and its usurpation or unlawful exercise is the concern primarily of the Government. The only exception in which the law permits an individual to bring the action in his own name is when he claims to be entitled to the public office alleged to be usurped or unlawfully held or exercised by another. That, however is not the present case." Petition denied. Vicente Cruz, et al. vs. Placido Ramos, et al., G. R. No. L-3059, Aug. 2, 1949.

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LABOR LAW—MERE LOSS OF CONFIDENCE NOT A GROUND FOR EMPLOYEE'S DISMISSAL.

Certiorari filed in 1941 to review an order of the Court of Industrial Relations. Record has been reconstituted.

On Dec. 11, 1940, the petitioner petitioned the CIR for authority to dismiss its bill collector Valdez and cashier Francisco Serrano for embezzlement and alleged negligence. At the time, there was pending before the Court a dispute between the Co. and its employees on wages and one of the employees affected was Serrano, for whom it was requested that salary be restored to former level in 1934.

The CIR found Serrano without blame, attributing his dismissal to the desire to get rid of union activities and denied petition to dismiss him. This order of March 13, 1941 is sought to be reviewed.

HELD: "It would be idle to review findings of fact of the CIR. This we are not supposed to do both under the Rules of Court and the law creating that body....The only question for determination is whether, with his innocence completely established Francisco Serrano could still be dismissed by his employee on the ground that the latter had already lost confidence in him.

"Our attention has been directed to the case of Miller vs. Jones (178 Iowa 168) where it was declared that if the employee's 'conduct was such as to indicate that his interests were hostile to those of his master, it was the right of the master to discharge him before any injury was in fact done.' But it is obvious from this quotation that to give the employer the right to discharge his employee before actual injury has been caused, the employee's conduct should indicate that his interests are hostile to those of his employer. Such, however, is not the case here. Mere suspicion or simple apprehension of danger or prejudice is insufficient to justify removal of the employee (39 C.J. 80-81) and to dismiss an innocent employee, such as the cashier in the present case, who, as found by the Industrial Court, has an untarnished record, in the company for many years, because he has identified himself with the movement to obtain concessions from the company in the matter of salaries, is to discourage legitimate union activities and frustrate the purpose of our labor laws." Judgment affirmed. Destileria Ayala y Cia. vs. Liga Nacional Obrera, G. R. No. L-48346, Aug. 9, 1949.

CRIMINAL PROCEDURE—ASSIGNMENT OF ERRORS UNNECESSARY IN APPELLANT'S BRIEF; BUT TECHNICAL ERRORS MUST BE SET OUT.

Appeal from the decision of the Court of Appeals affirming the judgment of conviction for violation of Art. 341 of the Rev. Penal Code. The ground of the appeal is that the Court of Appeals unjustly sanctioned the actuations of the CFI of Batangas in practically railroading the trial of the petitioner and in departing from the accepted and usual course of judicial proceedings which has prejudiced the petitioner and affected his substantial rights as to call for an exercise of the power of supervision of the Supreme Court.

The petitioner alleges that the complaint was filed on Oct. 15, 1945; arrested Oct. 16, 1945. He was arraigned Oct. 25, but was able to secure services of counsel on the eve of Oct. 25, and motion to prepare for defense denied; motion to prepare for trial was also denied.

The record of the case furnishes another story. It shows that the motion for continuance was filed before and not after arraignment.

Held: "The denial of the accused of time to plead or to prepare for trial was not raised or suggested in the Court of Appeals. His brief and memorandum put in issue only the sufficiency of the evidence. Even though in the brief a recital was made of the dates of the filing of motion for continuance and of trial, yet the purpose of the recital was not to invalidate the proceeding or to obtain a new trial, but to show, for undisclosed reason, that there had been undue haste in the disposal of the case. Bare statement of facts without specifying any particular objection does not prevent any question for review by the appellate court.

"In the present state of the case, the function of the Court, is limited to seeing whether the Court of Appeals erred on a matter of law If the refusal of the CFI to grant the defendant time to plead or to prepare for trial was error, it was error of which this Court may not take cognizance unless the appellate Court's attention was called thereto. A judgment of the trial court is not subject to attack in an appeal from an intermediate appellate court's decision unless the ground of the attack was raised or decided by that court, or unless the judgment is clearly void by reason of its having been rendered by the trial court having exceeded its jurisdiction. The error in question does not come under this category .

"Sec. 7, Rule 120 of the Rules of Court provides that 'the brief in criminal cases shall have the same contents as provided in Sec. 17 and 18 of Rule 48 applicable in civil cases except that the appellants are not required to make an assignment of error although it is advisable for them to do so.' This provision connotes that, unlike in appeals in civil cases, an assignment of error is unessential to invoke appellate review. (It should be noted that where the law of the Rules of Court requires an assignment of errors to be made, this formality is essential to authorize the appellate court to entertain the appeal. In view of such requirement, an appeal will be dismissed without benefit of review if the brief contains no assignment of errors).

"The rule means that notwithstanding the absence of an assignment of error, the appellate court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, but also on prejudicial errors to the right of the accused, which are plain, fundamental, vital or serious or on errors which go

to the sufficiency of the evidence to convict. The section of the Rules of Court doing away with formal assignment of errors does not dispense with the necessity of presenting out in some other form technical and nonfundamental errors which do not affect the substantial rights of the accused to a fair trial and are not patent. Such technical and nonfundamental errors must be specified with convenient proposition and argument if they are to be made the basis for modification or reversal of the appealed judgment or for further proceedings The reviewing court is not expected to search the record for every error of which the appellant might take advantage of but did not, nor would it be fair to the adverse party for the court to do so.' Judgment affirmed. Bonifacio Villareal vs. People of the Phil., G. R. No. L-1514, Aug. 5, 1949.

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HABEAS CORPUS NOT AVAILABLE TO ALIEN DETAINED PENDING DEPORTATION.

Petition for writ of habeas corpus. The petitioner is an alien of Russian descent who was brought to this country from Shanghai as a secret operative by the Japanese forces during the latter's regime in these Islands. Upon liberation, he was arrested as a Japanese spy by the U.S. Army Counter-Intelligence Corps. Later he was handed to the Commonwealth Government for disposition in accordance with Com. Act No. 682. Thereafter the People's Court ordered his release. But the Deportation Board, taking his case up, found that having no travel documents Mejoff was illegally in this country, and referred the matter to the immigration authorities. The Board of Commissioners of Immigration, after investigation, ordered on April 5, 1948, that he be deported on the first available transportation to Russia. After repeated failures to ship the deportee, he was removed to Muntinglupa where he had been confined up to the present.

HELD: "It must be admitted that temporary detention is a necessary step in the process of expulsion or exclusion of undesirable aliens and that pending arrangements for his deportation, the Government has the right to hold the undesirable alien under confinement for a reasonable length of time. However, under established precedents, too long a detention may justify the issuance of a writ of habeas corpus.

"The meaning of 'reasonable time' depends upon the circumstances, especially the difficulties of obtaining a passport, the availability of transportation, the diplomatic arrangements with the governments concerned and the efforts displayed to send the deportee away. Considering that this Government desires to expel the alien, and does not relish keeping him at the people's expense, we must presume it is making efforts to carry out the decree of exclusion by the highest officer of the land. On top of this presumption assurances were made during the oral argument that the Government is really trying to expedite the expulsion of this petitioner. On the other hand, the record fails to show how long he has been under confinement since the last time he was apprehended. Neither does it indicate neglected opportunities to ship him abroad. And unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation or unless the Government admits that it cannot deport him or unless the detained person is being held for too long a period, our courts will not interfere."

Writ denied. Boris Mejoff vs. Director of Prisons, G. R. No. L-2855, July 30, 1949.

ILLEGITIMATE CHILDREN NOT DEBARRED FROM BEARING FATHER'S SURNAME.

Plaintiffs, in the Court of First Instance of Cebu, prayed for an injunction restraining the defendants from using the name "Valencia". They allege that they are the legitimate children of Pio Valencia and that the defendants are the illegitimate children of said Pio Valencia by his common law wife, Emilia Rodriguez. Plaintiffs contend that they alone have the right to bear the surname of Valencia in accordance with Art. 114 of the Civil Code.

HELD: "We concede that the plaintiffs may use the surname of their father as a matter of right by reason of the mere fact that they are legitimate children, but we cannot agree with the view that Art. 114 of the Civil Code, without more, grants monopolistic proprietary control to legitimate children over the surname of their father. In other words, said article has marked a right of which legitimate children may not be deprived, but it cannot be interpreted as a prohibition against the use by others of what may happen to be the surname of their father. If plaintiff's theory were correct, they can stop countless persons from bearing the surname Valencia." Petition denied. Catalina de Valencia, et al. vs. Emilia Rodriguez, et al., G. R. No. L-1261, Aug. 2, 1949.

* * *

No matter whose the lips that would speak, they must be free and ungagged. The community which dares not protect its humblest and most hated member in the free utterances of his opinion, no matter how false or hateful, is only a gang of slaves.

—WENDELL PHILIPPS