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DECISION

Special civil action for prohibition filed by the Nacionalista Party and their official candidates for Senators against Vicente de Vera, Chairman of the Commission on Elections, to enjoin him from sitting or taking part in the deliberations of said Commission in connection with the elections of Nov. 8, 1949, on two grounds (1) that he is the father of Teodoro de Vera, one of the candidates of the Liberal Part for Senator and so he is disqualified from acting in all matters connected with said elections, and (2) that his appointment as Chairman is a violation of the Constitution and so is void ab initio.

I

Rule 126, sec. 1 of the Rules of Court is invoked by the petitioners.

Sec. 2 of said rule provides for the procedure to be followed in disqualification. Under this provision, the party seeking the disqualification of a judge or judicial officer must in writing, file with said judge or official his objections, stating his grounds and if the objections are denied, the remedy is an appeal to be taken after final judgment in the case. For this reason, the petition for prohibition is improper.

"This is on the assumption that the Rules of Court are applicable to the Commission on Elections, but in truth they are not. Sec. 13, Art. VIII of the Constitution grants to the Supreme Court . . . Courts referred to in this constitutional provision are those bodies invested with judicial power under Art. VIII, sec. 1 and they do not include the Commission on Elections, which, in a separate article is created as an independent administrative body with the exclusive charge of the enforcement and administration of all laws relative to the conduct of elections . . . Under the Constitution. the Supreme Court has no general power of supervision over the Commission on Elections except those specifically granted by the Constitution—to review decisions, orders and ruling of the Commission which may be brought up properly before the Supreme Court.

"If it is true, as suggested, that the Rules of Court have been adopted in a suppletory character by the Commission, such adoption can have no reference but to those rules that are necessary for the functioning of the Commission and which are not inconsistent with the nature of the proceedings and so does not include rules of disqualification of judicial officers. The Commission has no authority to

adopt or promulgate rules of such nature.

"The Rules of Court are not applicable to the Commission on Elections and so whether or not a Commissioner may or may not act on matters in which a son of his is directly interested, is a question of decorum and ethics for him exclusively to decide. The silence of the Constitution may be interpreted to mean that all prohibitions to that effect is unnecessary because the persons to be selected should be of such high morality as to exclude all probability of transgression of the simple rules of decency or good taste."

Respondent says that he has disqualified himself from acting as Chairman in all matters in which his son has a direct interest. There is no showing that his averment is not true.

II

As to the second ground, the petitioners contend that his appointment as Chairman is void because he was already a member of the Commission when he was appointed its Chairman and such appointment is in fact a reappointment which is expressly prohibited.

In this jurisdiction, the writ of prohibition cannot be availed of as a substitute for quo warranto. The ground invoked would be proper in quo warranto but not in a petition for prohibition. When the petition for prohibition seeks to inquire into a person's title to an office which he is holding under color of title, it has been denied upon the ground that quo warranto is the proper remedy. (Tayco vs. Capistrano, 53 Phil. 866) . .

"An exception to the general rule that the title of a person assuming to act as judge cannot be questioned in a suit before him is generally recognized in case of a special judge, and it is held that a party to an action before a special judge may question his title to office, and that judgment will be reversed on appeal, where proper exceptions are taken, if the person assuming to act as a special judge is not a judge de jure. It is unnecessary to say that the exception as to a special judge is not applicable to the respondent who is not a special commissioner.

"We should stop here were it not because of the divergence of opinion as to the true import of the constitutional provision concerning appointments to the Commission on Elections. The majority deems it advisable to express its views."

Sec. 1, Art. X of the Constitution. From this provision the prohibition against the respondent comes as a construction on requirement that the Commissioners shall hold office for a term of 9 years. The Commissioners may not be reappointed only after they have held office for 9 years. Reappointment is not prohibited when Commissioner has held office for 3 or 6 years provided his term will not exceed 9 years.

"The evident purpose of the second sentence of the section is to place in the Commission a new member every 3 years. And this purpose must be respected in every reappointment in favor of a Commissioner who has held office for less than 9 years. It may then be said as a fair interpretation of the Constitution, that reappointment may be made in favor of a Commissioner who has held office for less than 9 years provided it does not preclude the appointment of a new member every 3 years and provided further that the reappointee's term does not exceed 9 years in all.

"In order to carry out the purpose of the Constitution of placing in the Commission a new member every 3 years, it is essential that after the first Commissioners have been reappointed, every subsequent appointment shall so fix the appointee's term as to maintain the 3 years difference of incumbents. And this can be done if after the appointment of the first 3 Commissioners, the successor of anyone of them who ceases prior to the expiration of his term, be appointed only for the unexpired portion of that

term. Of course, when a Commissioner ceases because of the expiration of his term, his successor must be appointed for a term of 9 years; but when he ceases on other grounds prior to the expiration of his term, his successor must be appointed only for the unexpired portion of that term, otherwise the appointment would be offensive to the Constitution."

In 1945, 3 Commissioners were appointed—Lopez Vito, for 9 years; Enage for 6 years and de Vera for 3 years Under the interpretation above stated, Vera cannot be appointed to succeed himself upon the expiration of his term of 3 years. That would preclude the appointment of a new member after 3 years and also increase his term to 12 years, since upon the expiration of his term, his successor must be appointed for 9 years. But the Chairmanship of the Commission became vacant in 1947 upon the death of Lopez Vito and Vera was promoted to occupy the vacancy for the unexpired term of the former incumbent. There is nothing in that promotion that is offensive to the Constitution for it does not increase Vera's term of office to more than 9 years nor preclude the appointment of a new member upon the end of Vera's first term of 3 years.

"It is maintained that the prohibition against reappointment applies not only to the Commissioners appointed for 9 years but also to those appointed for a shorter period, because the reason underlying the prohibition is equally applicable to them, the prohibition, being, according to this theory, intended to prevent the Commissioners from being exposed to improper influences that are apt to be brought to bear upon those aspiring for reappointment. It is, however, doubtful whether this apparently persuasive reasoning is fully justified and supported by the wording of the Constitution. The language of the Constitution does not warrant the interpretation that the prohibition against reappointment applies not only to those appointed for 9 years but also those appointed for a shorter period. Upon the other hand, reappointment is not the only interest that may affect a Commissioner's independence, for he may also aspire to another position that is higher and better paid, and that also may affect his independence. And it is perhaps useless to prohibit reappointment to the same position if appointment to higher and better paid positions is not at the same time prohibited. This apart from the consideration that reappointment is not altogether disastrous. A Commissioner, hopeful of reappointment, may strike to do good. Whereas without that hope of material reward, his enthusiasm may decline as the end of his term approaches and he may lean to abuses if there is no higher restraint in his moral character. Moral character is no doubt the most effective safeguard of independence. With moral integrity, a Commissioner will be independent with or without possibility of reappointment. Without moral integrity, he will not be independent no matter how emphatic the provision on reappointment might be. That prohibition is sound only as to a Commissioner who has held office for 9 years, because after such a long period of hard work, it is but fair that the Commissioner be given a rest well-earned "

Petition denied.

Per Moran, C.J.; Bengzon, Padilla, Torres, Montemayor and Reyes, concurring.

Ozaeta concurring in a separate opinion.

Paras dissenting, with whom Tuason concurs.

THE NACIONALISTA PARTY VS. FELIX ANGELO BAUTISTA
G. R. No. L-3452—Dec. 7, 1949

Petition for prohibition. The petitioner alleges that on Nov. 9, 1949, the respondent, while still holding the

office of Solicitor-General, was designated by the President as acting member of the Commission on Elections. Respondent took his oath and proceeded to assume the duties of the office. At the time he had not resigned nor does he intend to resign his duties as Solicitor-General.

It was contended that the designation was invalid, illegal and unconstitutional because on Nov. 9, there was no vacancy in the Commission, for the acceptance and approval of the resignation of Enage constitutes an abuse of discretion and was done in bad faith by the President and because Enage is entitled to leave and until after the expiration of such leave he does not cease to be a member of the Commission.

Bad faith was based on the allegation and claim that the Commission had voted to suspend the elections in Negros Occidental and Lanao and the Liberal Party feared that Enage might vote to annul said elections.

Petitioner contended that even though there was a vacancy, still the respondent's designation, in addition to his duties of Solicitor-General is invalid, pending the appointment of a permanent member, because membership in the Commission is a permanent constitutional office with a fixed tenure and so no temporary officer can be appointed and Commissioner cannot at the same time hold any other office. The Solicitor belongs to the executive department and cannot assume powers of the Commission.

Respondent contended that his designation was lawful because the power to appoint vested in the President includes the power to designate and that it is also expressly provided in Com. Act No. 588 and that the offices held by him, one permanent and the other temporary are not incompatible.

I

"The claim that the office of Enage is not vacant is without foundation in law or in fact, because Enage applied for retirement in 1941, reiterated in 1946 and 1948 and it was granted on Nov. 9, 1949, and even if he is entitled to leave he did not apply for it. So upon the acceptance of retirement without application for leave, he vacated his office. Whether the granting of the application for retirement constitutes an abuse of discretion or was done in bad faith by the President is a subject matter into which we are not at liberty to inquire because of the well-known principle of separation of powers. The President is not a party to these proceedings."

The allegation of bad faith is without merit because the "Commission on Elections cannot vote to suspend an election but to recommend the suspension of an election and the Commission on Elections cannot vote to annul said elections for it has no power to annul an election. What at most it may do is to express its views in reports to be submitted to the President and Congress pursuant to Art. X, sec. 4 of the Constitution."

II

Is the appointment of Bautista, in addition to his duties of Solicitor-General, pending appointment of permanent member unlawful or unconstitutional?

"Whatever be the nature of the function of the Commission on Elections, the fact is that the framers of the Constitution wanted it to be independent from the other departments of the government. The membership of the Commission is for a fixed period of 9 years, except as to the first members appointed, who were to hold office for 9, 6 and 3 years. With these periods it was the intent to have one position vacant every 3 years, so that the President cannot appoint more than 1 Commissioner, thereby preserving and safeguarding the independence and impartiality of the Commission. But despite all the precautions the Constitution failed to plug the loophole or forestall the possibility that a member may die, resign, retire,

as in this case, or be removed by impeachment or disqualification, or become physically and mentally incapable to perform the duties and functions of the office. By death, resignation, retirement, or removal by impeachment, a vacancy in the Commission is created. In these cases, a President may appoint a Commissioner for the unexpired term. When such an event should come to pass the limitation to one appointment by a President would be ineffectual. By disqualification or incapacity no vacancy is created. When this possibility should eventuate to two Commissioners, the Commission's functions would be stopped or paralyzed. Perhaps a designation of other members during the incumbents temporary disability would not harm the public interest. But the case at bar is not one of disqualification or incapacity creating no vacancy but a retirement resulting in a vacancy. The principle that the power to appoint implies the power to designate, in the same way that that power carries with it the authority to remove, under the theory that the whole includes and is greater than the part, is not absolute but subject to limitations. (Sec. 24, 67, 97 of Rep. Act No. 296 and Sec. 4, Art. XII of the Constitution.) . .

"By the very nature of their function the members of the Commission on Elections must be independent. They must be made to feel that they are secured in the tenure of their office and entitled to fixed emoluments during their incumbency (economic security) so as to make them impartial in the performance of their functions—their powers and duties. They are not allowed to do certain things—as to engage in the practice of a profession, to intervene directly or indirectly in the management and control of any private enterprise . . . (Sec. 3 Art. X, Constitution). These safeguards are all conducive to tend to create or bring about a condition or state of mind that will lead the members of the Commission to perform with impartiality their great and important function. That independence and impartia'' may be shaken and destroyed by a designation of a person or officer to act temporarily in the Commission. And although Com. Act 588 provides that temporary designation 'shall in no case continue beyond the date of the adjournment of the regular session of Congress. . ., still such limitation does not remove the cause for the impairment of the independence of one designated in a temporary capacity to the Commission. It would be more in keeping with the intent, purpose and aim of the framers of the Constitution to appoint a permanent Commissioner than to designate one to act temporarily. Moreover, the permanent office of the respondent may not, from the strict legal point of view, be incompatible with the temporary one to which he has been designated, tested by the nature and character of the functions he has to perform in both offices, but in a broad sense, there is an incompatibility, because his duties as Solicitor-General require that all his time be devoted to their efficient performance. Nothing short of that is required and expected of him."

III

Petitioner alleges that it is organized under the laws of the Philippines . . . It may be organized as a political party with the Commission on Elections for purposes of the Rev. Election Code but to bring an action, such organization and regulation are not sufficient. It has to be incorporated under Act 1459. But this technical defect may be cured by allowing the substitution of the real parties in interest.

IV

"Is prohibition the proper remedy? Strictly speaking, there are no proceedings of the Commission in the exercise of its judicial and ministerial functions that are being performed

by it without or in excess of its jurisdiction or with grave abuse of discretion. The only basis for the petition is that the designation of the respondent as temporary member of the Commission is illegal and invalid because it offends against the Constitution. This special civil action is in effect to test the validity or legality of the respondent's designation in a temporary capacity pending appointment of a permanent member. It is in the nature of a quo warranto proceeding and so may be instituted by a party who claims title to the office, or the Solicitor-General. The authority and decision of courts are unanimous that prohibition will not lie to determine the title of a defacto judicial officer, since its only function is to prevent a usurpation of jurisdiction by a subordinate court. In the case at bar, however, the respondent's designation is unlawful because it offends against the provisions of the Constitution creating the Commission on Elections. The dismissal of the petition would deny and deprive the parties affected by such designation without a remedy and relief, because no one is entitled to the office and a party who is not entitled to the office may not institute quo warranto proceedings and respondent as Solicitor-General, the only party who may institude it, would not proceed against himself. In this instance, it is incumbent upon and is the duty of the court to grant the remedy. There are cases invoking a situation similar to this wherein it was ruled that the remedy of prohibition will lie." (High, Extraordinary Legal Remedies; Ex Parte Roundtree, 51 Ala. 42; Curtis vs. Cornish, 109 ME 384; State vs. Noble 118 Ind. 350).

"The foregoing authorities are invoked in view of the peculiar and extraordinary circumstances of the case. Were it not for this anomalous situation where there would be no remedy to redress a constitutional transgression, we would adhere strictly to the time-honored rule that to test the right of an office, quo warranto is the proper remedy."

Petitioner granted 5 days to amend petition to substitute real parties, or show it is a juridical person. After amendment, writ will be issued. If it is not amended, petition will be dismissed.

Per Padilla, J., Moran, Bengzon, Reyes concurring; Ozaeta concurring in a separate opinion, with whom Paras and Tuason concurs; Montemayor, concurring and dissenting in part and with whom Torres concurs.

MARCELO ADDURRU, et al
THE NACIONALISTA PARTY,
vs. COMMISSION ON ELECTIONS
G. R. No. L-3521—Dec. 13, 1949

Petition for mandamus to compel the Commission on Elections to exclude (not to count) the votes case for Senators in the provinces of Negros Occidental and Lanao during the last elections in the canvas to be performed pursuant to sec. 166 Rev. Elec Code. After hearing, petition denied on Dec. 9, 1949 and of which this is an extended opinion.

Several weeks before the holding of the last national elections, some of the petitioners made representations to the respondent that in view of the state of terrorism and political persecutions in said provinces against persons of the candidates and their leaders It had become impossible to hold free, orderly and honest elections.

Respondent, after considering evidence, approved a resolution on Nov. 4, 1949, finding allegations true and recommended to the President the postponement of elections in said provinces. President chose not to follow the recommendations.

Petitioners allege that rampant terrorism continued to exist during the elections, consequently elections held in said provinces are null and void and therefore, the votes cast therein should not be counted.

The question to be decided is whether the Commission is empowered to annul an election in any political division or subdivision because of alleged terrorism or fraud committed in connection therewith.

The Supreme Court cited Sec. 2, Art. X of the Constitution and implementing said provisions are sec. 8 and 166 of the Rev. Election Code. It also cited as germane to the constitutional and statutory provisions, sec. 11, Art VI of the Constitution.

"What are the implications of the power vested in the Commission to enforce and administer all laws relative to the conduct of elections and to insure free, orderly and honest elections? Does it include the power to annul an election which may not have been free, orderly and honest?

"It seems clear from the context of the constitutional provision in question as well as from other provisions already quoted that such power is preventive only and not curative also; that is to say, it is intended to prevent any and all forms of election fraud or violation of the Election Law, but if it fails to accomplish that purpose, it is not the Commission on Elections that is charged with the duty to cure or remedy the resulting evil but some other agencies of the government. We note from the text that the power to decide questions involving the right to vote is expressly withheld from the Commission, although the right to vote is provided in the Election Law, the enforcement and administration of which is in the exclusive charge of the Commission. Parallel to the withholding of such power from the Commission is the vesting in other agencies of the more inclusive power to decide all contests relating to the elections, returns and qualification of the members of Congress, namely the Electoral Tribunal of the Senate in case of Senators and the Electoral Tribunal of the House of Representatives in case of members of the latter. Election contests involving provincial and municipal officials are entrusted to the courts (sec. 172 et seq. Rev. Election Code). The power to decide election contests necessarily include the power to determine the validity or nullity of the votes acquired by either of the contestants.

"Thus, insofar as contests relating to the election of Senators and Representatives are concerned, not even this court is empowered to intervene.

"But as we construe the pertinent provision of the Constitution and of the Election Law, neither the Commission on Elections nor this Court is empowered to forestall and much less decide the impending contest. The jurisdiction over such a case is expressly and exclusively vested by the Constitution in the Electoral Tribunal of the Senate. Implementing the constitutional mandate on the subject is Sec. 182 of the Rev. Election Code.

"Sec. 166 of the Rev. Election Code constitutes the Commission as a national board of canvassers with respect to election of senators, who under sec. 2 of Art. VI of the Constitution are chosen at large by qualified electors of the Philippines. In the absence of any provision in the law making the members of a canvassing board judges of the elections and giving them full power and authority to approve or set it aside and order a new election, such a board is considered to be merely a ministerial body which is empowered only to accept as correct returns transmitted to it which are in due form and to ascertain and declare the result as it appears therefrom. *Questions of illegal voting and fraudulent practices are passed on by another tribunal.* The canvassers are to be satisfied with the genuineness of the returns—namely, that the papers presented to them are not forged and spurious, that they are returns, and that they are signed by the proper officers. When so satisfied, however, they may not reject any returns because of informalities in them (. because of ille-

gal practices, in the elections . . Where the returns are obviously manufactured, as where they show a great excess of votes over what could legally have been cast, the board will not be compelled to canvass,"

"We do not deem it proper for us to determine the legal effect of the Commission's recommendation to the President Under the Constitution, 'questions of illegal voting and fraudulent practices are passed on by another tribunal,'—the Electoral Tribunal of the Senate. Such questions will in all probability be raised before said tribunal at the proper time, and we must not prejudge an issue over which we have no jurisdiction. Whether the votes for Senators in Negros Occidental and Lanao are valid or invalid is a question which neither the Commission on Elections nor this Court is empowered to decide.

"We have seen that it is not the duty of the Commission on Elections to pass upon the legality of an election alleged to have been tainted with fraud, intimidation and other violations of the Election Law. On the contrary it is its ministerial duty to count the votes appearing in the election returns after satisfying itself of the genuineness of said returns. What in effect the petition seeks is to require the respondent to desist from performing a ministerial duty."

Petition denied .

Per Ozaeta, J., with all concurring.

ANTONIO LACSON vs. HONORIO ROMERO, et al.
G.R.No. L-3081—Oct. 14, 1949

Quo warranto proceedings filed directly with the Supreme Court involving the office of Provincial Fiscal of Negros Oriental.

Petitioner Lacson was on July 25, 1946 appointed by the President as Provincial Fiscal of Negros Oriental. His appointment was confirmed by the Com. on Appointments and he took his oath of office on Aug. 10, 1946.

On May 17, 1949, upon recommendation of the Sec. of Justice, Lacson was nominated by the President as provincial fiscal of Tarlac. On the same date, respondent Romero was also nominated as provincial fiscal of Negros Oriental. Both nominations were confirmed on May 19, 1949.

Lacson neither accepted his appointment nor assumed the office of fiscal of Tarlac. But Romero took his oath and proceeded to his station. Lacson refused to turn over the office to him. On June 24, 1949, Romero appeared in a criminal case and his appearance was accepted by the respondent Judge Narvasa. Later, he appeared in a special proceeding and his appearance was also accepted by the respondent Judge Ocampo. Respondents provincial auditor and treasurer refused to pay Lacson his salary and instead paid them to Romero. Whereupon, Lacson brought the present petition.

The determination as to who is entitled to the office depends upon the answers to the following questions: 1.) Did the nomination of Lacson to Tarlac and its confirmation by the Commission on Appointments, without his acceptance create a vacancy in the post of provincial fiscal, so that Romero could be lawfully appointed? 2.) Does the nomination of Lacson to Tarlac and its confirmation serve and is equivalent to removal: and if it was, was such removal valid and lawful? 3.) Could the President remove Lacson at will and without cause or did the post of provincial fiscal in general have attached to it a tenure of office during which the incumbent may not be removed except for cause?

1. "The appointment to a government post, like that of provincial fiscal, to be complete involves several steps. First comes the nomination by the President. Then to make that nomination valid and permanent, the Com. on Appointments has to confirm said nomination. The last step is the acceptance thereof by the appointee

by his assumption of office. The first two steps, nomination and confirmation, constitute a mere offer of a post. They are acts of the Executive and Legislative departments of the government. But the last necessary step to make the appointment complete and effective rests solely with the appointee himself. He may or he may not accept the appointment or nomination . . . Consequently, since Lacson has declined to accept his nomination as provincial fiscal of Tarlac and no one can compel him to do so, he continues as provincial fiscal of Negros Oriental and no vacancy in said office was created, unless Lacson had been lawfully removed as such fiscal of Negros Oriental.

2. "As to the second question, it is obvious that the intended transfer of Lacson to Tarlac on the basis of his nomination thereto, if carried out, would be equivalent to a removal from his office in Negros Oriental. To appoint and transfer him from one province to another would mean his removal or separation from the first province. The reason is that a provincial fiscal is appointed for each province and Lacson could not well or legally hold and occupy two posts simultaneously . . . When the transfer is consented to and accepted by the transferee, then there would be no question, but, where as in the present case, the transfer is involuntary and objected to, then it is necessary to decide whether the removal is lawful.

"What is the nature of the office of provincial fiscal? Is it included in the Civil Service. The answer is undoubtedly in the affirmative " The post of provincial fiscal is included in subsection (6), Sec. 671 of the Adm. Code as amended by Com. Ac. No. 177, sec. 8 (Persons embraced in the unclassified civil service.)

As to the third question, the Constitution itself denies the right of the President even with concurrence of the Commission on Appointments to remove a provincial fiscal without cause. Art. XII, sec. 4 of the Constitution provides that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law." This constitutional provision is reproduced word for word in the first paragraph of sec. 691 of the Rev. Adm. Code, as amended.

It is contended that the power of removal is inherent in the power to appoint and that consequently, the President had the right to remove the petitioner. "Ordinarily where there is no constitutional limitation the contention of the respondent would be tenable; but where in the Philippines the Constitution forbids the removal of a civil service official or employee like the petitioner except for cause as provided by law, said right of the Chief Executive is qualified and limited. That constitutional prohibition is a limitation to the inherent power of the Executive to remove those civil service officials whom he appoints . . ."

The contention that the provincial fiscal is not appointed for a fixed term and there is no tenure of office attached to the post is without merit. Considering the security and protection accorded a provincial fiscal from arbitrary removal and the provisions of sec. 691 of the Adm. Code, "the logical inference is that a provincial fiscal duly appointed until he reaches the age of 65, has the right to continue in office unless sooner removed for cause. In other words, he enjoys tenure of office, which is fully protected by statute and the constitution . . ."

The Adm. Code and the civil service rules provides for the causes or some of the cause for removal of civil service officials. Before a civil service official can be removed, there must first be an investigation at which he must be given a fair hearing and an opportunity to defend himself. In the case of the petitioner, the records fail to show, neither is there any claim that he has been charged with any

violation of law, nor has he been investigated.

Petition granted.

DOROTEA DE LA CRUZ vs. MARCELINO
G. R. No. L-1610—Oct. 12, 1949

This case involves the right of legal redemption. There is no question as to the fact. Trial court reached the conclusion that plaintiff could not legally redeem because she had not offered to repurchase before actually filing the action and making the deposit of money.

"Of course it is usual and the better practice for the co-owner to first approach the third person and offer to buy back the share of her coowner However, there is nothing to prevent the co-owner from going directly to court and practically make the offer to repurchase. The third person (defendant) could upon answering the complaint, manifest his conformity or else oppose the plaintiff's petition. If he opposes, the litigation will necessarily proceed to judgment."

The trial court held that a previous tender was a condition precedent to the right of redemption, because Art. 1525 of the Civil Code makes applicable to legal redemption the provisions of Art. 1511 and 1518 . . .

"The position is not entirely groundless but it is the consensus among the members of the court that the above articles merely enumerate the amounts to be paid by the co-owner who wishes to redeem. They do not postulate any previous notice to the new owner nor a meeting between him and the redemptioner, much less a previous formal tender, before any action is begun in court to enforce the right. A sensible and prudent may would naturally endeavor to present the offer privately, to avoid the inconveniences of court proceedings. But it is not always just to graft into the statute such rules of common sense as may be deemed appropriate. Considering that the co-owner has 9 days only, the previous tender requisite might in some instances frustrate the assertion of the coowner's prerogative. He might not know the third person's whereabouts. The latter might even conceal himself to prevent redemption.

"An offer or tender is not an essential condition precedent to coowner's right to redeem. The important thing is to assert it in time and in proper form." Plaintiff's right to redeem must be upheld.

JUSTA GUIDO vs. RURAL PROGRESS ADMINISTRATION, et al
G. R. No. L-2089—Oct. 31, 1949

Petition for prohibition to prevent the Rural Progress Administration and Judge Oscar Castelo of CFI Rizal from proceeding with the expropriation of the petitioner's land and of two adjoining lots with an area of 22,655 sq. m., partly commercial, situated in Maypajo. Supreme Court only dealt with the contention of the petitioner that the land sought to be expropriated is commercial and therefore excluded within the purview of Com. Act. 539.

Sec. 1 of said Act provides that the President is authorized to acquire private lands or any interest therein through purchase or expropriation and to subdivide the same into house lots or small farms for resale at reasonable prices and under such conditions he may fix to their bona fide tenants or occupants or to private individuals who are qualified to acquire and own lands in the Philippines. Sec. 2 provides that the President may designate any department, bureau or office to carry out objectives of the Act. The National Assembly approved said enactment on the authority of Sec. 4 Art. XIII of the Constitution.

What lands does this provision have in view? Do it comprehend all lands regardless of their location, nature

and area? The Supreme Court held that the provision applies only where extensive areas were involved and numerous peoples and the general public benefitted by the action taken.

"The condemnation of a small property in behalf of 10, 20 or 50 person and their families does not inure to the benefit of the public to a degree sufficient to give the use public character. The expropriation proceedings at bar have been instituted for the economic relief of a few families devoid of any consideration of public health, public order and peace, or other public advantage. What is proposed to be done is to take the plaintiff's property, which for all we know she acquired by her sweat and sacrifice for her and her family's security, and sell it at cost to a few lessees who refuse to pay the stipulated rent or leave the premises.

"No fixed line of demarcation between what taking is for public use and what is not can be made; each case has to be judged according to its peculiar circumstances. It suffices to say for the purpose of this decision that the case under consideration is far wanting in those elements which make for public convenience a public use. It is patterned upon an ideology far removed from that consecrated in our system of government and embraced by the majority of the citizens of this country. If upheld, this case would open the gates to more oppressive expropriation. If this expropriation is constitutional, we see no reason why a 10, 15, or 25 hectare farm land might not be expropriated and subdivided and sold to those who want to own a portion of it. To make the analogy closer, we find no reason why the Rural Progress Administration could not take by condemnation and urban lot containng an area of 1,000 or 2,000 sq. m. by subdividing into tiny lots for resale to its occupants who want to build thereon."

Petition granted.

DE PONCE vs. SAGRARIO, RUIZ CASTRO, Judge Advocate General and JARDELEZA, Chief Finance Service, AFP
G. R. No. L-2836—Dec. 6, 1949

Appeal from decision of the CFI in a petition for mandamus where the petitioner sought to compel respondents Ruiz Castro and Jardeleza to bring to proper CFI by way of interpleader proceedings, the conflicting claims between petitioner and respondent Sagrario for arrears in pay due the late Lt. Ponce.

Proceedings for the arrears were began under Rep. Act No. 136.

Petitioner is the legitimate mother of Lt. Ponce who was killed in 1942 in line of duty. She filed before the Recovered Personnel Division of the Phil. Army a claim for arrears in pay on the allegation that Lt. Ponce was single and had no legitimate or acknowledged natural children. The Claims Branch adjudicated the claim for ₱7,200, but which was not paid to her because of the respondent Sagrario's claim. Sagrario claims to be the wife of Lt. Ponce, with whom she had one daughter, born on May 24, 1942, after his death.

In the hearing had before the Judge Advocate General, the alleged marriage was held to have been sufficiently established.

Sec. 8 of Rep. Act. 136 provides that whenever dispute as to who of 2 or more persons are legal heirs of the deceased the Judge Adv. General suspend the distribution until the courts decide the controversy in an acton for interpleader.

Respondent relies on Sec. 3 which provides that the Judge Adv. General shall ascertain the names and residences of persons entitled to the money and summarily distribute them among heirs. It is contended that the JAG has quasi-judicial powers, that if every denial of a claim could divest the JAG of jurisdiction and necessitates forwarding of case, the whole Rep. Act 136 would be nullified and his discretion meaningless.

"A fact is said to be properly in dispute when it is alleged by any one and denied by the other and by both with some show of reason." It is not denied that the mother's claim is bona fide.

"Good faith and some showing on the part of opposing claimants are the sole test of the existence or non-existence of dispute under Act 136. It is immaterial that the dispute is, in the opinion of the JAG, only apparent or that he is convinced that one claim is well-founded and the other is not. The weighing of opposing evidence and decisions on questions of law or fact, when conflicting claims like the claim in question are presented, require the exercise of judgement or discretion. This function is eminently judicial and devolves, as it should, on the courts of law.

"The theory that when JAG is convinced that one claim is well-founded he may make the adjudication in disregard of other claims is clearly untenable. This theory, carried to its logical conclusion, would place in hands of JAG power to determine whether a case should be referred to the proper court or be decided finally and definitely by him. Such constructions finds no justification either in the letter or spirit of Act 136.

"The JAG's sole role under this Act is purely administrative and ministerial. This is manifest from the language of the Act, from the nature of the office, from the express provision of Sec. 3, that his power is subject to limitation imposed by Sec. 8 and from the fact that the investigation is authorized to make is summary. It would be illogical to suppose that the legislature allowed the adjudication of contentious matters involving title to monies in a proceeding devoid of formality and by an administrative officer whose decision is final and unappealable, according to the respondent, in face of the universal policy which secures to parties the right to have reviewed all judicial determinations which are reached only after a regular and fair trial in which full opportunity to present evidence was given to the litigants."

What Sec. 3 envisages is the situation where no claims are filed for monies due or where only 1 claim is presented. It is the duty of the JAG to ascertain by the best means within his power the names and residences of persons who are entitled to the monies. In the second case, it is the duty to see that the claimant is not an impostor or that no other have a better right, nor entitled to share in the benefits.

Briefed by MILAGROS NARTATEZ