

EN BANC

[G.R. No. L-409. January 30, 1947.]

ANASTACIO LAUREL, *petitioner*, vs. **ERIBERTO MISA**, *respondent*.

RESOLUTION

"In G. R. No. L-409, Anastacio Laurel vs. Eriberto Misa, etc., the Court, acting on the petition for *habeas corpus* filed by Anastacio Laurel and based on the theory that a Filipino citizen who adhered to the enemy giving the latter aid and comfort during the Japanese occupation cannot be prosecuted for the crime of treason defined and penalized by article 114 of the Revised Penal Code, for the reason (1) that the sovereignty of the legitimate government in the Philippines and, consequently, the correlative allegiance of Filipino citizens thereto was then suspended; and (2) that there was a change of sovereignty over these Islands upon the proclamation of the Philippine Republic:

"(1) Considering that a citizen or subject owes, not a qualified and temporary, but an absolute and permanent allegiance, which consists in the obligation of fidelity and obedience to his government or sovereign; and that this absolute and permanent allegiance should not be confused with the qualified and temporary allegiance which of foreigner owes to the government or sovereign of the territory wherein he resides, so long as he remains there, in return for the protection he receives, and which consists in the obedience to the laws of the government or sovereign. (Carlisle vs. United States, 21 Law. ed., 42g; Secretary of State Webster Report to the President of the United States in the case of Thraser, 6 Web. Works, 526);

"Considering that the absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of the government or sovereign *de jure* is not transferred thereby to the occupier, as we have held in the cases of *Co Kim Cham v. Valdez Tan Keh and Dizon* (75 Phil., 113) and of *Peralta vs. Director of Prisons* (75 Phil., 285), and if it is not transferred to the occupant it must necessarily remain vested in the legitimate government; that the sovereignty vested in the titular government (which is the supreme power which governs a body politic or society which constitute the state) must be distinguished from the exercise of the rights inherent thereto, and may be destroyed, or severed and transferred to another, but it cannot be suspended because the existence of sovereignty cannot be suspended without putting it out of existence or divesting the possessor thereof at least during the so-called period of suspension; that what may be suspended is the exercise of the rights of sovereignty with the control and government of the territory occupied by the enemy passes temporarily to the occupant; that the subsistence of the sovereignty of the legitimate government in a territory occupied by the military forces of the enemy during the war, 'although the former is in fact prevented from exercising the supremacy over them' is one of the 'rules of international law of our times'; (II Oppenheim, 6th Lauterpach ed., 1944, p. 482), recognized, by necessary implication, in articles 23, 44, 45, and 52 of Hague Regulation; and that, as a corollary of the conclusion that the sovereignty

itself is not suspended and subsists during the enemy occupation, the allegiance of the inhabitants to their legitimate government or sovereign subsists, and therefore there is no such thing as suspended allegiance, the basic theory on which the whole fabric of the petitioner's contention rests;

"Considering that the conclusion that the sovereignty of the United States was suspended in Castine, set forth in the decision in the case of United States vs. Rice, 4 Wheaton, 246, 253, decided in 1819, and quoted in our decision in the cases of Co Kim Cham vs. Valdez Tan Keh and Dizon and Peralta vs. Director of Prisons, *supra*, in connection with the question, not of sovereignty, but of the existence of a government *de facto* therein and its power to promulgate rules and laws in the occupied territory, must have been based, either on the theory adopted subsequently in the Hague Convention of 1907, that the military occupation of an enemy territory does not transfer the sovereignty, or on the old theory that such occupation transfers the sovereignty to the occupant; that, in the first case, the word 'sovereignty' used therein should be construed to mean the exercise of the rights of sovereignty, because as this remains vested in the legitimate government and is not transferred to the occupier, it cannot be suspended without putting it out of existence or divesting said government thereof; and that in the second case, that is, if the said conclusion or doctrine refers to the suspension of the sovereignty itself, it has become obsolete after the adoption of the Hague Regulations in 1907, and therefore it can not be applied to the present case;

"Considering that even adopting the words 'temporary allegiance,' repudiated by Oppenheim and other publicists, as descriptive of the relations borne by the inhabitants of the territory occupied by the enemy toward the military government established over them, such allegiance may, at most, be considered similar to the temporary allegiance which a foreigner owes to the government or sovereign of the territory wherein he resides in return for the protection he receives as above described, and does not do away with the absolute and permanent allegiance which the citizen residing in a foreign country owes to his own government or sovereign; that just as a citizen or subject of a government or sovereign may be prosecuted for and convicted of treason committed in a foreign country, in the same way an inhabitant of a territory occupied by the military forces of the enemy may commit treason against his own legitimate government or sovereign if he adheres to the enemies of the latter by giving them aid comfort; and that if the allegiance of a citizen or subject to his government or sovereign is nothing more than obedience to its laws in return for the protection he receives, it would necessarily follow that a citizen who resides in a foreign country or state would, on one hand, *ipso facto* acquire the citizenship thereof since he has to obey, with certain exceptions, the laws of that country which enforce public order and regulate the social and commercial life, in return for the protection he receives, and would, on the other hand, lose his original citizenship, because he would not be bound to obey most of the laws of his own government or sovereign, and would not receive, while in a foreign country, the protection he is entitled to in his own;

"Considering that, as a corollary of the suspension of the exercise of rights of sovereignty by the legitimate government in the territory occupied by the enemy military forces, because the authority of the legitimate power to govern has passed into the hands of the occupant (Article 43, Hague Regulations), the political laws which prescribe the reciprocal rights, duties and obligation of government and citizens, are suspended or in abeyance during military occupation (Co Kim Cham vs. Valdez Tan Keh and Dizon, *supra*), for the only

reason that as they exclusively bear relation to the ousted legitimate government, they are inoperative or not applicable to the government established by the occupant; that the crimes against national security, such as treason and espionage, inciting to war, correspondence with hostile country, flight to enemy's country, as well as those against public order, such as rebellion, sedition, and disloyalty, illegal possession of firearms, which are of political complexion because they bear relation to, and are penalized by our Revised Penal Code as crimes against the legitimate government, are also suspended or become inapplicable as against the occupant, because they can not be committed against the latter (Peralta 1.S. Director of Prisons, *supra*); and that, while the offenses against public order to be preserved by the legitimate government were inapplicable as offenses against the invader for the reason above stated, unless adopted by him, were also ill operative as against the ousted government for the latter was not responsible for the preservation of the public order in the occupied territory, yet article 114 of the said Revised Penal Code, was applicable to treason committed against the national security of the legitimate government, because the inhabitants of the occupied territory were still bound by their allegiance to the latter during the enemy occupation;

"Considering that, although the military occupant is enjoined to respect or continue in force, unless absolutely prevented by the circumstances, those laws that enforce public order and regulate the social and commercial life of the country, he has, nevertheless, all the powers of a *de facto* government and may, at his pleasure, either change the existing laws or make new ones when the exigencies of the military service demand such action, that is, when it is necessary for the occupier to do so for the control of the country and the protection of his army, subject to the restrictions or limitations imposed by the Hague Regulations, the usages established by civilized nations, the laws of humanity and the requirements of public conscience (Peralta vs. Director of Prisons, *supra*; 1940 United States Rules of Land Warfare 76, 77); and that, consequently, all acts of the military occupant dictated within these limitations are obligatory upon the inhabitants of the territory, who are bound to obey them, and the laws of the legitimate government which have not been adopted, as well and those which, though continued in force, are in conflict with such laws and orders of the occupier, shall be considered as suspended or not in force and binding upon said inhabitants;

"Considering that, since the preservation of the allegiance or the obligation of fidelity and obedience of a citizen or subject to his government or sovereign does not demand from him a positive action, but only passive attitude or forbearance from adhering to the enemy by giving the latter aid and comfort, the occupant has no power, as a corollary of the preceding consideration, to repeal or suspend the operation of the law of treason, essential for the preservation of the allegiance owed by the inhabitants to their legitimate government, or compel them to adhere and give aid and comfort to him; because it is evident that such action is not demanded by the exigencies of the military service or not necessary for the control of the inhabitants and the safety and protection of his army, and because it is tantamount to practically transfer temporarily to the occupant their allegiance to the titular government or sovereign; and that, therefore, if an inhabitant of the occupied territory were compelled illegally by the military occupant, through force, threat or intimidation, to give him aid and comfort, the former may lawfully resist and die if necessary as a hero, or submit thereto without becoming a traitor;

"Considering that adoption of the petitioner's theory of suspended

allegiance would lead to disastrous consequences for small and weak nations or states, and would be repugnant to the laws of humanity and requirements of public conscience, for it would allow invaders to legally recruit or enlist the Quisling inhabitants of the occupied territory to fight against their own government without the latter incurring the risk of being prosecuted for treason, and even compel those who are not to aid them in their military operation against the resisting enemy forces in order to completely subdue and conquer the whole nation, and thus deprive them all of their own independence or sovereignty — such theory would sanction the action of invaders in forcing the people of a free and sovereign country to be a party in the nefarious task of depriving themselves of their own freedom and independence and repressing the exercise by them of their own sovereignty; in other words, to commit a political suicide;

"(2) Considering that the crime of treason against the government of the Philippines defined and penalized in article 114 of the Penal Code, though originally intended to be a crime against said government as then organized by authority of the sovereign people of the United States, exercised through their authorized representative, the Congress and the President of the United States, was made, upon the establishment of the Commonwealth Government in 1935, a crime against the Government of the Philippines established by authority of the people of the Philippines, in whom the sovereignty resides according to section 1, Article II, of the Constitution of the Philippines, by virtue of the provision of section 2, Article XVI thereof, which provides that all laws of the Philippine Islands . . . shall remain operative, unless inconsistent with this Constitution . . . and all references in such laws to the Government or officials of the Philippine Islands, shall be construed, in so far as applicable, to refer to the Government and corresponding officials under this Constitution;'

Considering 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' (section 1, Article II), but also by the Executive Department of the United States; that 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 that 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 of the country.'

"Considering that section I (1) of the Ordinance appended to the Constitution which provides that pending the final and complete withdrawal of the sovereignty of the United States 'All citizens of the Philippines shall owe allegiance to the United States', was one of the few limitations of the sovereignty of the Filipino people retained by the United States, but these limitations do not do away or are not inconsistent with said sovereignty, in the same way that the people of each State of the Union preserves its own sovereignty although limited by that of the United States conferred upon the latter by the States; that just as to

reason may be committed against the Federal as well as against the State Government, in the same way treason may have been committed during the Japanese occupation against the sovereignty of the United States as well as against the sovereignty of the Philippine Commonwealth; and that the change of our form of government from Commonwealth to Republic does not affect the prosecution of those charged with the crime of treason committed during the Commonwealth, because it is an offense against the same government and the same sovereign people, for Article XVIII of our Constitution 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 Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines';

"This Court resolves, without prejudice to write later on a more extended opinion, to deny the petitioner's petition, as it is hereby denied, for the reasons above set forth and for others to be stated in the said opinion, without prejudice to concurring opinion therein, if any. Messrs. Justices Paras and Hontiveros dissent in a separate opinion. Mr. Justice Perfecto concurs in a separate opinion."