

WAR DEPARTMENT,
WASHINGTON.

July 25, 1921.

Mr. Robert H. Todd,
Republican National Committeeman for Porto Rico,
58 West 47th Street,
New York City.

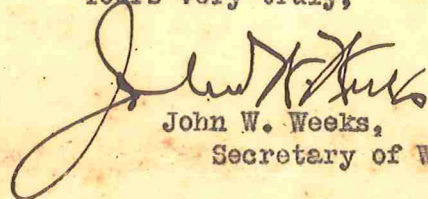
Dear Sir:

I beg to acknowledge the receipt of your letter of July 13th, in which you recommend Honorable Emilio del Toro, an Associate Justice of the Supreme Court of Porto Rico, for appointment as Chief Justice of said court upon retirement of the present incumbent, about September 1st of this year.

You also present for consideration the names of Messrs. Jose A. Poventud, Leopoldo Feliu and Carlos Franco Soto in filling the vacancy left in the Supreme Court should Justice del Toro be promoted to Chief Justice.

I am glad to have your recommendation of these gentlemen, and will be pleased to bring it to the attention of the President at the time the matter of filling any vacancies in the Porto Rican Supreme Court is being considered.

Yours very truly,



John W. Weeks,
Secretary of War.

EMILIO DEL TORO
ASSOCIATE JUSTICE

San Juan, P. R.

Dec 7, 1921

Hon. Robert H. Todd,

Washington, D. C.

Mi querido amigo: Ayer tarde
el Presidente Hernández nos comu-
nicó a los jueces reunidos en
la sala de consultas, que por
el correo de hoy enviaba su
renuncia por tener efecto
el 8 de Enero próximo en que
comenzará a funcionar la Corte
después de las vacaciones de
Navidad.

EMILIO DEL TORO
ASSOCIATE JUSTICE

La cuestión pendiente se
presenta, pues, al Jefe para
su resolución definitiva. Ayer
mismo fué en cable que
tenía convenido a Carlo Franco,
así es que le informo ya
a estas horas enterado de
todo.

Cualquiera que sea el
resultado que se obtenga,
bien me sabré apreciar en
todo su valor su noble y
espartánea actividad para
conmigo.

Sinceramente suyo,

Emilio del Toro.

the Junta Central which was waiting in session to hear the result of the conference.

JUSTICE WOLF LIKELY TO SUCCEED JUSTICE HERNANDEZ

Justice Adolf G. Wolf is likely to succeed Chief Justice Hernández on the retirement of the latter, which is expected at any time. Provision was made by the last legislature for the retirement of Chief Justice Hernández on a pension at such time as he chose to tender his resignation. It was understood that he would resign not later than November 1, but it was said yesterday that he had not yet done so.

Judge Wolf is the senior member of the court and it was reported some time ago that he had suggested to President Harding that he would like either to be transferred to the Federal bench or promoted to chief justice of the Insular Supreme Court in the event of a vacancy.

Should Judge Wolf move up friends of José E. Benedicto are already working for his appointment as associate justice.

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SAN JUAN, P. R.

Nov 5 1921

Hon Robert H Todd
Member, Republican National Committee
San Juan.

My dear Mr Todd:

I take the liberty of addressing you upon a subject, of which I do not know your personal opinion, but which I feel is a question of vital importance to the People of Porto Rico. That is the prospective vacancy of Chief Justice of the Supreme Court of Porto Rico. I enclose a clipping from the Porto Rico Progress of Nov 3 1921. It seems to me this position belongs exclusively to a native Porto Rican, and should not under any circumstances go to a continental American irrespective of his ability, integrity or eminence. It seems that nothing would be so harmful to the Republican Administration in this Island as the appointment of a continental American to this position.

I have the honor to remain



Henry W Dooley
Democratic National Committeeman
for Porto Rico

HWD/MC

December 15, 1921.

Honorable Emilio Del Toro,
Associate Justice, Supreme Court of Porto Rico,
San Juan, P. R.

My dear friend:-

I had the pleasure of receiving your letter of the 17th instant and you must excuse me for not replying in Spanish, as the young lady who is writing cannot do so in our vernacular.

At the same time that your letter arrived the Governor showed me a copy of the resignation of the Chief Justice, the original of which is now in the hands of the President to take effect on the 9th of January next. Previous to this, and while Judge Franco was here in Washington with me, I had a long talk with Secretary Weeks about the whole situation. I went at length into the history of the Supreme Court and its present and past membership and told him how Justice Wolf had obtained the Governor's endorsement. I told him what I knew of you and then I handed him a copy of your record, which he read very carefully and asked me what your age was and I told him that you were about forty-five years old.

When I told the Secretary the kind of man that Wolf was he stopped me short and said that when he spoke to him he immediately made up his mind that Wolf was a weakling and sort of a dyspeptic fellow and concluded, telling me that I should not worry, that he understood the situation perfectly well and would take up the matter with the President and asked me to leave with him your written record and he would use it in his conversation with the President.

My impression from this conversation is that the matter is closed and that you will be appointed to the position. Things that have happened after that talk make me believe that there is no doubt whatever about the outcome. I am enclosing herewith a copy of a letter which I wrote to Judge Towner after a long conversation which I had with him on the same subject, and he also assured me that he would talk to the President.

Hon. Emilio Del Toro

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December 15, 1921.

In justice to the Governor, I must tell you that yesterday I had a long talk with him about the situation and in reference to a cable which he had just received from Senator Tous Soto recommending you for the office of Chief Justice and Judge Frankel for the vacancy in the Supreme Court. The Governor admitted that he had acted somewhat hastily in his recommendation and believed that you were the best man of the two, and would talk to the President and let him know of the situation.

After your appointment, I will then take up the matter of Judge Frankel and hope to succeed in my endeavors. At any event, I am positive that no Unionist will get into the Court.

With my best wishes for a Merry Christmas and a Happy New Year, and if you have any letters to write me, continue to do so care of the National Committee, as I might run over to New York for a few days.

Yours very sincerely,

RHT

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

New York City, July 13th, 1921.

Hon. Harry M. Daughtery,
Attorney General of the United States,
Washington, D. C.

Sir:

In Re. resignation of the Chief Justice of
the Supreme Court of Porto Rico.

On or about the first day of September next the office of
Chief Justice of the Supreme Court of Porto Rico will be made
vacant by resignation of the present incumbent, who will retire
on account of age.

I am instructed by my friends in Porto Rico to present to
your consideration, for the filling of the vacancy, the name of
Hon. Emilio del Toro, one of the Associate Justices of the said
Supreme Court, a learned jurist, a thorough American, and a splen-
did type of citizen. The appointment of Justice del Toro to the
exalted position of Chief Justice would, I assure you, commend it-
self to all good Americans in Porto Rico.

For the vacancy left in the Supreme Court, in case Justice
del Toro is appointed, I am also instructed to present to your
consideration the names of Hon. Jose A. Poventud, Hon. Leopold
Feliu and Hon. Carlos Franco Soto, practicing attorneys of good
repute, the last named having been a District Judge for a number
of years, a position which he filled with honor and distinction.
They are all good Americans, stand high in the community, and
anyone receiving the appointment would give satisfaction to the
people.

Thanking you in advance for the consideration which you may
give to these recommendations, I beg to remain,

Very respectfully,

(Ed) R. H. Todd

Republican National Committeeman for Porto Rico.

EMILIO DEL TORO
ASSOCIATE JUSTICE

San Juan, P. R.

Dec 23, 1921.

Hon. Roberto H. Fodde,

Washington, D. C.

Mi querido amigo: Acabo de leer su carta del día 15 y la copia de la que dirigió al Juez Fournier. En verdad que ha trabajado usted de una manera inteligente, generosa y decidida mi candidatura. Le estoy sumamente agradecido. Redoblaré mi interés y mi esfuerzo en mi labor de Juez de tal modo que aquellos que de-

EMILIO DEL TORO
ASSOCIATE JUSTICE

permitasen su confianza en mí
 se veían satisfechos. Cada
 hora que pasa me doy cuenta
 más exacta de lo elevado
 de la posición y de la
 gran responsabilidad que en-
 vuelve y he pido a Dios
 que me permita estar o
 por lo menos acercarme a la
 altura de ella.

Le deseé felices Pascuas
 y próspero Año Nuevo y que
 pronto le volvamos a ver por
 aquí siempre sano y fuerte.

Micevamente mío,
 Emilio del Toro.

M E M O R A N D U M
IN CONNECTION WITH THE PROVISION FOR
THE OFFICE OF CHIEF JUSTICE OF PORTO RICO.

Law and Precedent.

It is maintained that in Porto Rico when the office of Chief Justice of the Supreme Court becomes vacant there is no binding precedent for the appointment of the senior Associate Justice to fill the place. In such cases, the President, in accordance with law and precedent, may appoint to the office any practicing attorney or any of the Associate Justices who in his opinion possesses the necessary qualifications therefor.

Chief Justices Quiñones and Hernández.

When General Brooke, following instructions from the President of the United States, assumed in October, 1898, command of the Department of Porto Rico, the highest court of justice in the Island was the "Audiencia Territorial."

The Hon. José Conrado Hernández and José Severo Quiñones were members of that Court, the former as proprietary Justice and the latter as acting Justice. Hernández had entered the judiciary since 1874 and on May 5, 1898 was appointed to the "Audiencia Territorial de Puerto Rico" after serving an equal office in the Philippines. Quiñones was all his life an eminent practicing attorney, and on September 21, 1898 was designated acting Justice of the "Audiencia Territorial de Puerto Rico."

Notwithstanding that Hernández was older than Quiñones both in the court itself and in the judiciary, when the office of Chief Justice of the Court became vacant Quiñones was appointed, on October 27, 1898, to fill the place. The "Audiencia Territorial" then became the Supreme Court of Justice.

Thereafter, the same military government reorganized the judiciary of the Island. The "Corte Suprema de Justicia" was abolished and the "Tribunal Supremo de Justicia" created in its stead (Secs. 2 and 12 of General Order No. 118, series of 1899). Quiñones was appointed Chief Justice and Messrs. Hernández, Figueras, Nieto and Morera, Associate Justices.

On April 12, 1900 our first Organic Act was approved. The Supreme Court remained as it was, but it was provided, among other things, that the Chief Justice and Associate Justices should be appointed by the President with the advice and consent of the Senate (Secs. 33 et seq. of the Organic Act of April 12, 1900.) And President McKinley appointed Quiñones Chief Justice and Hernández, Figueras, Nieto and Sulzbacher Associate Justices.

Chief Justice Quiñones died on March 6, 1909 and on April 9 of the same year President Taft appointed Associate Justice Hernández Chief Justice of Porto Rico. Justice Hernández had always been considered the oldest by reason of his earlier service in the judiciary, ~~but the truth is that there was a member of the Court, Justice Figueras, who both~~

became a member of the Supreme Court created by General Order No. 118, of 1899, and was later appointed Associate Justice by President McKinley, on the same day as Justice Hernández.

It does not appear that the fact that Hernández was considered the senior Justice was the ground upon which President Taft based his appointment. Justice Hernández possessed excellent personal conditions for the office, and, besides, if it is borne in mind that it was President Taft who made the appointment, it may be concluded that although the above circumstance could be and in all probability was considered, nevertheless it had not a decisive influence in the appointment.

Thus, there have been appointed only two Chief Justices for Porto Rico. In the first case there was appointed a great lawyer who had been an acting judge only a month, over another judge who had been twenty-five years in the judiciary. In the second instance the appointment was in favor of the member of the court who was considered the senior Associate Justice.

Can it be held, under the foregoing facts, that there is a established precedent in Porto Rico in favor of the senior Justice? We maintain the negative.

Our conclusion is based also upon the history of the Supreme Court of the nation and that of the Supreme Court of the Philippines.

The only case where an Associate Justice of the Supreme Court has been appointed Chief Justice of the United States was that of the appointment of Chief Justice White, and when President Taft appointed him Chief Justice he was not the

senior Justice of the Court. The senior Associate Justice at the time was that eminent jurist whose name was John Marshall Harlan.

Early in the year 1920 the office of Chief Justice of the Philippines became vacant by the resignation of Mr. Arellano who had occupied the place since 1901. Neither Mr. Torres, who was the senior Justice, nor Mr. Johnson who was next to him, nor any of the Associate Justices was appointed Chief Justice. The appointment was in favor of Mr. Mapa, who had been an Associate Justice of the court but had ceased to be one of its members in 1913 when he was appointed Secretary of Finance and Justice.

In further support of the adopted practice of upholding the freedom of appointment by the President, the following reasoning is submitted:

A person may be fully qualified to be an associate Justice and yet be lacking in faculties to discharge the duties of the office of Chief Justice. The former is, to a certain extent, a passive office. Its duties are well discharged by making a conscientious study of the cases submitted in the solitude of the private office and delivering just and well-founded opinions. The latter requires besides a mind accustomed to preside over and conduct arguments, to convey its thoughts clearly and promptly, and demands an ample constructive and administrative capacity.

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