34 Phil. 157

[G.R. No. 10793. March 07, 1916]

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO AND VALERIANO BANTILLO, RESPONDENTS.

D E C I S I O N

MORELAND, J.:

This is a petition for a writ of certiorari directed to the Court of First Instance of Iloilo requiring it to send to this court the record in the case of the Government of the Philippine Islands *vs.* Valeriano Bantillo to the end that certain orders, judgments and decrees made therein may be examined by this court and their legality determined.

It appears from the record that on the 19th day of September, 1914, the Government of the Philippine Islands brought an action against Valeriano Bantillo in the justice's court of Balasan, Iloilo, to recover ₱42.50, forest taxes due and owing from him to the plaintiff. After the trial, which occurred on the 21st of October following, the complaint was dismissed on the merits. On the 24th of October the plaintiff appealed to the Court of First Instance of the Province of Iloilo and on the 4th of January, 1915, filed its complaint in the latter court, alleging the same facts and demanding the same relief as the complaint in the justice's court. Later, and on the 6th of March 1915, the appellee moved the Court of First Instance for the dismissal of the appeal on the ground that the Government had failed to file an appeal bond within the time prescribed by law. On the hearing of the motion it appeared undisputed that, while the appeal was taken on the 24th of October, 1914, no appeal bond was filed until January 29, 1915. On this showing the court dismissed the appeal, basing the decision entirely upon the fact that the law relative to appeals from justices1 courts had not been complied with in that an appeal bond had not been filed within fifteen days after the appeal was taken.

It is the contention of the petitioner in the proceeding for the writ that the Government of the Philippine Islands does not fall within the provisions of the law requiring the

presentation of a bond on appeal from the justice's court, and that the Court of First Instance, in making the failure to file such a bond the sole basis for its judgment dismissing the appeal, exceeded its jurisdiction and overreached its powers and that its judgment dismissing the appeal was, therefore, void.

While we agree with the petitioner that the Government of the Philippine Islands is not required to give a bond on taking an appeal from a justice's court, or from any of the courts of the Philippine Islands, we cannot go with the petitioner so far as to declare that the Court of First Instance, in dismissing the appeal for that reason, exceeded its jurisdiction and that its order was, therefore, void. We said in the case of Herrera *vs.* Barretto and Joaquin (25 Phil. Rep., 215) :

> "It has been repeatedly held by this court that a writ of certiorari will not be issued unless it clearly appears that the court to which it is to be directed acted without or in excess of jurisdiction. It will not be issued to cure errors in the proceedings or to correct erroneous conclusions of law or of fact. If the court has jurisdiction of the subject matter and of the person, decisions upon all questions pertaining to the cause are decisions within its jurisdiction and, however irregular or erroneous they may be, cannot be corrected by certiorari. The Code of Civil Procedure giving Courts of First Instance general jurisdiction in actions for mandamus, it goes without saying that the Court of First Instance had jurisdiction in the present case to resolve every question arising in such an action and to decide every question presented to it which pertained to the cause.

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> "Jurisdiction is the authority to hear and determine a cause—the right to act in a case. Since it is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decisions made. Jurisdiction should therefore be distinguished from the exercise of jurisdiction. The authority to decide a cause at all, and not the decision rendered therein, is what makes up jurisdiction. Where there is jurisdiction of the person and subject-matter, as we have said before, the decision of all other questions arising in the case is but an exercise of that jurisdiction."

Further discussing the same matter the court said:

> "It is not a light thing that the lawmakers have abolished writs of error and with them certiorari and prohibition, in so far as they were methods by which the mere errors of an inferior court could be corrected. As instruments to that end they no longer exist. Their place is now taken by the appeal. So long as the inferior court retains jurisdiction its errors can be corrected only by that method. The office of the writ of certiorari has been reduced to the correction of defects of *jurisdiction* solely and cannot legally be used for any other purpose. It is truly an extraordinary remedy and, in this jurisdiction, its use is restricted to truly extraordinary cases—cases in which the action of the inferior court is wholly void; where any further steps in the case would result in a waste of time and money and would produce no result whatever; where the parties, or their privies, would be utterly deceived; where a final judgment or decree would be naught but a snare and a delusion, deciding nothing, protecting nobody, a judicial pretension, a recorded falsehood, a standing menace. It is only to avoid such results as these that a writ of certiorari is issuable; and even here an appeal will lie if the aggrieved party prefers to prosecute it." (Gala *vs.* Cui and Rodriguez, 25 Phil. Rep., 522; De Fiesta *vs.* Llorente and Manila Railroad Co., 25 Phil. Rep., 654; Province of Tarlac *vs.* Gale, 26 Phil. Rep., 338; Napa *vs.* Weissenhagen, 29 Phil. Rep., 180.)

The petitioner does not contend that the Court of First Instance had no jurisdiction of the action at the time the order dismissing the appeal was made. On the contrary, it assumes that the court had full jurisdiction of the appeal and, therefore, of the action, and that its duty was to go forward and dispose of it in accordance with law. If petitioner's contention is correct, then any judgment which it pronounced with respect to the appeal or the merits of the action would be quite within its jurisdiction, no matter whether the decision on the pending question was right or wrong. It is sufficient for the purposes of this case that the Court of First Instance had jurisdiction over the appeal and had power, therefore, either to grant a motion for the dismissal of the appeal or to deny it; and its decision, whichever way it fell, was within its power and jurisdiction and could not be made the subject of a writ of certiorari.

The demurrer is sustained and the petitioner given five days in which to amend. If the

petition is not amended within that time in a manner to meet the requirements of this decision, it will be dismissed finally. So ordered.

Arellano, C. J., Torres, Johnson, and *Araullo, JJ.,* concur.
Carson, J., see concurring opinion
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CONCURRING OPINION

CARSON, J.:

I concur.

Petitioner had a plain, adequate, and speedy remedy by appeal, and having declined or failed to take an appeal, cannot be permitted to bring the ruling of the court below to this court for review in certiorari proceedings.

I desire at this time, however, to suggest the possibility that the doctrine laid down in the prevailing opinion (and in the line of decisions dealing with the same subject, some of which are cited in the prevailing opinion, Herrera *vs.* Barretto and Joaquin, 25 Phil. Rep., 245; Gala *vs.* Cui and Rodriguez, 25 Phil. Rep., 522; De Fiesta *vs.* LIorente and Manila Railroad Co., 25 Phil. Rep., 554; Province of Tarlac *vs.* Gale, 26 Phil. Rep., 338; Napa *vs.* Weissenhagen, 29 Phil. Rep., 180) is set forth in such broad and comprehensive language, that it fails to take account of certain exceptional cases which may and doubtless will arise in the future.

Jurisdiction is conferred upon this court in sections 16, 17, 18, and 19 of Act No. 136, which provides for the organization of courts in the Philippine Islands. These sections are as follows:

> "SEC. 16. *Jurisdiction of the Supreme Court.*—The jurisdiction of the Supreme Court shall be of two kinds:

"1. Original; and

"2. Appellate.

"SEC. 17. *Its original jurisdiction*.—The Supreme Court shall have original jurisdiction to issue writs of mandamus, certiorari, prohibition, habeas corpus, and quo warranto in the cases and in the manner prescribed in the Code of Civil Procedure, and to hear and determine the controversies thus brought before it, and in other cases provided by law.

"SEC. 18. *Its appellate jurisdiction*.—The Supreme Court shall have appellate jurisdiction of all actions and special proceedings properly brought to it from Courts of First Instance, and from other tribunals from whose judgment the law shall specially provide an appeal to the Supreme Court.

"SEC. 19. *Power to issue all necessary auxiliary writs*.— The Supreme Court shall have power to issue writs of certiorari and all other auxiliary writs and process necessary to the complete exercise of its original or appellate jurisdiction."

The limitations placed upon the use of the writ of certiorari in this jurisdiction in the various decisions above cited are based upon and supported by the provisions of section 17 of Act No. 136 which empowers this court in the exercise of its *original jurisdiction* to issue such writs *"in the cases and in the manner prescribed in the Code of Civil Procedure * * * and in other cases provided by law."*

In so far as these decisions undertake to announce the limitations which should be placed upon the use of the writ of certiorari by this court in the exercise of its *purely original jurisdiction,* I have no especial quarrel with the doctrine, though it seems to me that it goes to the utmost extreme in that direction. But it is to be observed that there is a class of cases in which this court is authorized to issue writs of certiorari, wherein this court may and should proceed without regard to the limitations placed upon the power of the court in the issuance of such writs in the exercise of its original jurisdiction. I refer of course to the power of the court conferred under the provisions of section 19 to issue all auxiliary writs and processes necessary to the complete exercise of its original or appellate jurisdiction. In such cases certiorari, like all other auxiliary writs, will issue without regard to the limitations upon the power of the court in section 17 of Act No. 136, and the doctrine of

limitations set forth in the above cited decisions is largely if not wholly inapplicable. The only limitations on the power of this court in the use of the writ of certiorari as an auxiliary writ are those which are disclosed by an examination of the nature and history of these auxiliary writs as used in the courts of England and the United States and as they were known to, and understood by the authors of Act No. 136, at the time of its enactment.

The language of the above cited decisions is so sweeping and comprehensive in its general references to the use of the writ of certiorari that I think it well to indicate the distinction which should be drawn between the use of the writ by the court in the exercise of its original jurisdiction and its use as an auxiliary writ "necessary to the complete exercise" of the court's original or appellate jurisdiction.

I have little doubt that in an appropriate case, wherein a party is deprived of a right to appeal to this court, secured to him by statute, without fault on his part, this court will lend him such assistance through the use of the writ of certiorari as may be necessary to the complete exercise of its appellate jurisdiction; and I am satisfied also, that in any case pending in one of the inferior courts wherein no appeal lies to this court, this court will not hesitate to make use of the writ of certiorari or any other writ, which under the circumstances of the particular case may be "necessary in the complete exercise" of its jurisdiction to correct and restrain abuses of discretion or the exercise of jurisdiction not conferred by law or the refusal to exercise jurisdiction actually conferred.

I am satisfied also that neither reason nor authority supports the unqualified proposition that an erroneous ruling of an inferior court that it has or has not jurisdiction in a case wherein the law expressly denies or confers jurisdiction, cannot be made the subject of a writ of certiorari. If there is no appeal from the erroneous ruling, and the ruling is based on a manifestly erroneous interpretation of the law, such a ruling constitutes at least such an abuse of discretion as to justify the intervention of this court for the correction of the error in either certiorari, or mandamus or prohibition proceedings, as the varying circumstances of the particular case may require.

This court has on various occasions compelled judges of Courts of First Instance by mandamus to dismiss appeals from courts of justices of the peace on the ground that under the law Courts of First Instance had not acquired or had lost jurisdiction; and of course auxiliary writs of certiorari would be issued in any such case where it appears to be necessary for the complete exercise of the court's original jurisdiction in mandamus proceedings. So we have compelled a judge of a Court of First Instance to proceed to try a

case in which he had ruled that he was disqualified to sit; and in at least one case we have, in certiorari proceedings, annulled an order entered in a Court of First Instance erroneously dismissing a duly perfected appeal from a court of a justice of the peace. (De Castro and Morales *vs*. Justice of the Peace of Bocaue, (33 Phil. Rep., 595.) It is admitted that mandamus does lie to compel an inferior court to exercise its jurisdiction in a particular way, or, as it is said, to control the discretion of an inferior tribunal, and the above cited decisions necessarily rested on the theory either that the inferior courts abused the discretion conferred upon them when they rested their rulings taking or declining to take jurisdiction on an erroneous construction of the law conferring or denying jurisdiction, or else that there is no jurisdiction in these courts, in the proper sense of the word, to take or refuse to take jurisdiction in a particular case in which the law expressly denies or confers jurisdiction.

I am convinced that cases may and doubtless will arise in which, auxiliary to its original jurisdiction to issue writs of mandate, this court will issue the writ of certiorari to bring up the proceedings in the court below, in order that the appropriate writ may issue on a full review of the whole record.

I shall not stop at this time to review the rulings of the various courts of last resort in the United States, wherein, as I think, the great weight of authority supports my contention. I content myself with a reference to the numerous authorities cited in the monographic notes to Dane *vs.* Derby (89 Am, Dec, 722, 739, 741); and the following, which form a few of the reported cases:

> "Although the writ of mandate will not lie to correct errors committed by a court while exercising its judicial discretion upon the merits of the case (either of law or of fact) within its jurisdiction, as was held in State *vs.* Smith (23 Mont., 329; 58 Pac, 857), yet, to adopt the language of the Supreme Court of the United States in *Ex parte* Parker (120 U. S., 737; 7 Sup. Ct. Rep., 767), which case has been cited with approval in State *vs*. Eddy (10 Mont, 311; 25 Pac, 1032), the writ of mandate does 'properly lie in cases where the inferior court refuses to take jurisdiction where by law it ought so to do, or where, having obtained jurisdiction in a cause, it refuses to proceed in the due exercise thereof.' In the Parker case the Supreme Court of the territory of Washington refused to hear a case taken to that court by appeal, because it considered, upon an erroneous interpretation of the statute, that the parties were not in court for the purposes of appeal, and the

court dismissed the appeal for want of jurisdiction. The Supreme Court of the United States issued a peremptory mandamus commanding the territorial court to reinstate the appeal, and proceed, in the exercise of its jurisdiction, to hear and determine the same upon its merits. (*Ex parte* Schollenberger, 96 U. S., 369; Harrington *vs.* Holler, 111 U. S., 796; 4 Sup. Ct. Rep., 697; *In re* Parker, 131 U. S., 221; 9 Sup. Ct. Rep., 708; Gaines *vs.* Rugg, 148 U. S., 228; 13 Sup. Ct. Rep., 611; and *In re* Hohorst, 150 U. S., 653; 14 Sup. Ct. Rep., 221, in which writs of mandate were issued, are well-considered cases upon this subject.) The doctrine announced by the Supreme Court of the United States, and the principles deduced by the text-writers mentioned from a consideration of the cases, are well-nigh universally recognized and followed by the English and American courts, as will appear by an examination of the following citations: Castello *vs.* Circuit Court (28 Mo., 259); State *vs.* Cape Giardeau Court of Common Pleas (73 Mo., 560) ; State *vs.* Laughlin (75 Mo., 3583 ; State its. Hunter (3 Wash., 92; 27 Pac, 1076); Fergus6n *vs.* Kays (21 N. J. L., 431) ; People *vs.* New York Common Pleas (18 Wend., 534); Wood *vs.* Strother (76 Cal., 545; 9 Am. St. Rep., 249; U Pac, 766); Floral Springs Water Co. *vs.* Rives (14 Nev., 431); State *vs.* Murphy (19 Nev., 89; 6 Pac, 840). Nor is this court without the authority of its own adjudications which either expressly or tacitly recognize the doctrines and principles referred to: State *vs.* Eddy (10 Mont., 311; 25 Pac.,1032); State *vs.* District Court of First Judicial District (13 Mont, 370; 34 Pac, 298); State *vs.* District Court of Third Judicial District (14 Mont., 476; 37 Pac, 7).” (Raleigh *vs.* First Judicial District Court, 81 Am. St. Rep., 431.)

“Another objection is made here to our consideration of the question of the power of the court to modify the order. It is that the court below has determined that it did not have jurisdiction, and that that determination is conclusive and cannot be reviewed in this court upon this proceeding. The order refusing to vacate or modify the order setting apart the homestead is not appealable. (Estate of Cahill, 142 Cal., 628.) An appeal from the original order would have been useless, for, as it was made without notice or contest, there could be no bill of exceptions showing the facts on which it was based. Therefore, if the decision of the court that it did not, as matter of law, have jurisdiction to act, is conclusive as to the law, the petitioners are without remedy, although the original order may have been manifestly erroneous, or may have been fraudulently obtained, and the court may have been utterly mistaken in its view that it was without power to

modify it. That it was mistaken in that view is definitely settled by the decision of this court in Levy *vs.* Superior Court (139 Cal., 590), holding that the superior court has power to vacate such an order under section 473 of the Code of Civil Procedure.

"This court has held that where the jurisdiction of the superior court to try a cause or hear an appeal depends on the existence of certain facts, and that court has, upon evidence consisting either of affidavits or of the record, made its determination as to the facts, although erroneously, this court cannot in *mandamus* proceedings go behind this determination and itself consider from evidence whether or not the jurisdiction existed; and this seems to be the law even where there is no conflict in the evidence and the court below has acted judicially only to the extent that it has determined the existence of facts from evidence, and where the facts thus determined did not in law justify the decision of the superior court that it did not have jurisdiction. Thus where the lower court, acting as a court of appeal, has decided that the record in a case from a justice's court did not give the superior court jurisdiction of the appeal because the notice of appeal did not have a revenue stamp attached, or because in an appeal on questions of law alone there was no statement on appeal, and has thereupon dismissed the appeal (People *vs.* Weston, 28 Cal., 640; Lewis *vs.* Barclay, 35 Cal., 213); or where the superior court upon affidavits removed the cause to the United States district court and refused to proceed further therein (Francisco *vs.* Manhattan Ins. Co., 36 Cal., 286) ; or upon the facts stated in a petition to be allowed to intervene had refused to allow the intervention (People *vs.* Sexton, 37 Cal., 532); or after considering the condition of its calendar and other facts and circumstances tending to excuse the failure to try a criminal case within sixty days after the filing of the information, had refused to dismiss the cause (Strong *vs.* Grant, 99 Cal., 100); or upon the facts stated in an accusation filed under section 772 of the Penal Code, had refused to issue a citation against the accused officer (Kerr *vs.* Superior Court, 130 Cal., 184). In all these cases the determination of the superior court as to its jurisdiction over the particular cause upon the facts shown has been deemed final and conclusive upon this court where a review of that determination was sought by proceedings in *mandamus*.

"The distinction between this class of cases and the case at bar is this: In all these cases the superior court was called upon to consider either the sufficiency of certain facts established by the record, or certain facts determined by that

> court upon evidence properly addressed to it, to give it jurisdiction to proceed with the particular case then before the court, and with its decision, after such consideration, this court cannot interfere by *mandamus*. In the case at bar there was no question of fact involved, and the superior court decided that, as a matter of law purely, it could not in any case vacate an order made under the provisions of section 1465 of the Code of Civil Procedure setting apart a homestead. This was a proposition not dependent on any facts whatever, but wholly upon a consideration of the powers of the court as defined by the constitution and by statute.
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> " 'The court cannot, by holding without reason that it has no jurisdiction of the proceedings, divest itself of jurisdiction and evade the duty of hearing and determining it.' To the same effect are Merced M. Co. *vs.* Fremont (7 Cal., 130); Ortman *vs.* Dixon (9 Cal., 23) ; Heinlen *vs.* Cross (63 Cal., 44); People *vs.* Barnes (66 Cal., 594); Crocker *vs.* Conrey (140 Cal., 213)." (Cahill *vs.* Superior Court, 145 Cal., 42.)

Finally, this court in the case of Carroll and Ballesteros *vs.* Paredes (17 Phil. Rep., 94), said:

> "A party entitled to appeal, or to pursue some other remedy, who has lost the right, through inadvertence, accident, or mistake, may have a remedy by certiorari, on a showing of probable merits and freedom from fault. (6 Cyc, 763, and cases from Alabama, Arkansas, District of Columbia, Mississippi, North Carolina, Oregon, and Tennessee.)
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> "In the case at bar Ballesteros could have appealed to this court from the decision of the Court of First Instance, as the justice of the peace had no jurisdiction to try the case and impose the penalties, but his failure to appeal was not through any neglect or fault of his, as he honestly believed that in view of the provisions of section 16 of Act No 1627, supra, he could not appeal. Under these circumstances he is clearly entitled to the remedy of certiorari."

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