

ANASTASIA PAMINTUAN ET AL., PETITIONERS, VS. JULIO LLORENTE, JUDGE OF FIRST INSTANCE, AND CLEMENTE DAYRIT, RESPONDENTS.

G.R. No. 10144. January 27, 1915

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PER CURIAM:

This is an application for the writ of mandamus. Its purpose is to compel the Honorable Julio Llorente to continue with the trial of a cause commenced in the Court of First Instance of the Province of Pampanga, while he was yet judge of said court. The important facts alleged in the complaint are as follows:

First. That on the 3d day of August, 1910, the defendant (Clemente Dayrit) commenced an action in the Court of First Instance of the Province of Pampanga against the plaintiffs in this action. Said action was numbered 507.

Second. That at the time of the commencement of said action (the 3d of August, 1910), the said Honorable Julio Llorente was judge of the Court of First Instance of said province.

Third. That on the 1st day of July, 1914, the Honorable Julio Llorente ceased to be judge of said court and became judge, on said date, of the Fifth Judicial District, in accordance with the provisions of Act No. 2347.

Fourth. That sometime between the 3d day of August, 1910, and the 1st day of July, 1914, the said judge had entered upon the trial of said cause; that the declarations of some of the witnesses had been taken; that he had seen and heard said witnesses; that he had made an ocular inspection of the property in question in said cause No. 507.

Fifth. That on the 1st day of July, 1914, the trial of said cause was still pending.

Sixth. That after the 1st day of July, 1914, and after the Honorable Julio Llorente had ceased to be judge of the Court of First Instance of the Province of Pampanga and had become judge of the Fifth Judicial District, he refused to continue with the trial of said cause, No. 507, for the reason that he claimed that he was incompetent to try the same.

The plaintiffs, upon the foregoing facts, prayed that a writ of mandamus should be issued by this court, directing, requiring, and compelling the said Honorable Julio Llorente to continue the trial of said cause No. 507 until its conclusion.

To said petition, the defendants or respondents presented a demurrer, alleging that the facts stated were not sufficient to constitute a cause of action; that the facts stated in said complaint showed that the Honorable Julio Llorente had been judge of the Fifth Judicial District from the 1st day of July, 1914, and was, therefore, incompetent to continue the trial of said cause No. 507 pending in the Court of First Instance of the Province of Pampanga, the Seventh Judicial District.

Upon the issue thus presented the cause was submitted to this court.

The simple question presented by the petition and the demurrer is, whether or not, under the provisions of Act No.

2347, a judge who had commenced the trial of a cause and who had ceased to be the judge of the particular court in which said cause was pending, before the termination of the same, may be compelled by mandamus to continue with the trial of the same. The petitioners in the present cause rely upon the provisions of section 24 of said Act No. 2347. Said section 24 provides:

"All criminal or civil cases, and all judicial proceedings of a like nature, pending decision or sentence, or pending continuance of the evidence in the present Courts of First Instance, at the time when this Act takes effect, shall remain under the jurisdiction of said courts, until their final decision ; and all civil or criminal cases, and all judicial proceedings of a like nature that have been filed or initiated and are pending trial or a hearing in said courts shall be transferred to their successors for trial and sentence, and all pending decision or decree, or continuance of the evidence in the Court of Land Registration at the date on which this Act takes effect, shall continue until their final decision under the jurisdiction of the judges of said court to whom such cases were assigned, and all cases filed or begun, but pending trial or a hearing in the Court of Land Registration, shall be transferred to the judges of the Court of First Instance of the provinces where said lands made the object of said cases are situate."

The particular part of said section upon which the petitioners rely is the following:

"All criminal or civil cases * * * pending decision or sentence in the present Courts of First Instance at the time when this Act takes effect, shall remain under the jurisdiction of said courts, until their final decision."

If the quoted provision of said section 24 was the only provision of said Act No. 2347, there might be but little difficulty in ascertaining the purpose of the Legislature. We find, however, another section which bears an important relation to the interpretation of said section 24. Section 7 of said Act, among other things, provides:

"The present judges of Courts of First Instance, judges at large, and judges of the Court of Land Registration vacate their positions on the taking effect of this Act."

This Act took effect on the 1st day of July, 1914.

It will be noted that section 7, in effect, provides that the present judges (those appointed prior to July 1, 1914) shall vacate their positions on the 1st day of July, 1914. The language used in the phrase "shall vacate their positions" is very strong language. The Legislature could hardly have used stronger language if its real purpose was to terminate the judicial authority of the "present judges." The word "vacate" means, according to Webster, "To make vacant; to leave empty; to cease from filling or occupying; to annul; to deprive of force; to make of no authority or validity; to defeat; to put an end to."

The Standard Dictionary also defines the word "vacate" as follows: "To make vacant; empty; to surrender possession of by removal; to put an end to; give up; quit; leave."

Bouvier, in his valuable Law Dictionary, defines the word "vacate" as follows: "To annul; to render an act void."

Black, in his Law Dictionary, defines the word "vacate" to mean: "To annul; to cancel or rescind; to render an act void."

Mr. Ladd, in the case of *Bautista vs. Johnson* (2 Phil. Rep., 230) defines the word "vacate," as used in Act No. 267, to mean: "To annul; to render void." Mr. Ladd continues by saying: "No stronger word could have been employed by the Commission (Legislature) in the law in question to signify absolute extinction."

If then the judicial authority of the "present judges" was ended or terminated or extinguished, by what authority could they continue to act? And suppose also that the "present judges" had not been reappointed, by what authority could they act? But the petitioners argue that under the provisions of section 24 (Act No. 2347) "all criminal or civil cases * * * pending decision or sentence, or pending continuance of the evidence in the present

courts * * * shall remain under the jurisdiction of said courts, until their final decision," and that, therefore, the "present judges" are vested with authority and jurisdiction to continue to consider said cases until their final decision. A careful reading of said provision discloses the fact, however, that said "criminal or civil cases," etc., "pending decision, shall remain under the jurisdiction of the courts" and not under the jurisdiction of the judges. The purpose of this provision was to clearly indicate that the existing Courts of First Instance were to continue; that the existing courts were not "vacated" or terminated or extinguished. Had the existence of the courts been terminated or "vacated," then, of course, all actions pending would have been ended, and it would have been necessary to recommence them in the new courts. It was clearly not the intention of the Legislature to destroy the existing Courts of First Instance. The law clearly indicates the contrary. Its purpose was simply to change the personnel of the judges, or at least to require all the judges to be reappointed under the new law and under new qualifications. Had the Legislature intended that all criminal and civil cases pending decision, etc., etc., shall remain under the jurisdiction of the "present judges," it would have said so. On the contrary, it is said that all criminal and civil cases pending decision, shall remain under the jurisdiction of the courts then existing.

The petitioners argue at length that the word "judges" and "courts" are used synonymously and interchangeably. That is true, generally speaking. In ordinary parlance judges are spoken of as the courts and the courts are referred to, when the person speaking means the judge simply. It is common for persons, lawyers, and judges, as well as the law, to use these terms interchangeably. But, notwithstanding that fact, there is an important distinction between them which should be kept in mind. Courts may exist without a present judge. There may be a judge without a court. The judge may become disqualified, but such fact does not destroy the court. It simply means that there is no judge to act in the court. The courts of the Philippine Islands were created and the judges were appointed thereto later. In a few instances, the judges were appointed before the courts were established: A person may be appointed a judge and be assigned to a particular district or court subsequently. So it appears that there is an important distinction between the court, as an entity, and the person who occupies the position of judge. In the most general sense these words may be used interchangeably. In the statute under consideration, however, it is clear that the Legislature intended to make a distinction between "courts" and "judges." It is clear, when sections 7 and 24 are read together, that when the Legislature "vacated" the "present judges" by section 7, that they did not intend to "vacate" the "courts," or otherwise they would not have provided that "all criminal and civil cases, pending decision," etc., "shall remain under the jurisdiction of the courts." It was clearly not the intention of the Legislature to "vacate" the courts. Its purpose was simply to change the personnel of the judges of the courts. In other words, on and after the 1st of July, 1914, there were no judges of the Courts of First Instance until and unless others were appointed. But the courts still existed, just as though the law had not been changed. The law simply changed the personnel of the courts.

Certainly the Legislature did not intend to provide, after it had vacated, terminated and put an end to the judicial authority of the "present judges," that said judges should continue to exercise judicial authority, unless and until they were reappointed. The Act nowhere provides that the existing courts shall be supplanted. It (the Act) simply changes the district. It expressly recognizes the existence and continuance of the present courts, with the same jurisdiction which theretofore existed. The new judges which were appointed under and by authority of said Act (No. 2347) "have the same jurisdiction and competency as conferred by existing law upon the Courts of First Instance." (See last paragraph of sec. 1 of said Act). There was no attempt even to change the jurisdiction of the Courts of First Instance, except to confer upon them the jurisdiction which had theretofore been exercised by the Court of Land Registration. In every other respect the "Courts" of First Instance existed after the 1st of July, 1914, with the same powers and jurisdiction which they had exercised theretofore.

The petitioners further argue that the Honorable Julio Llorente, having heard a part of the proof in case No. 507, should, for that reason, hear it all and decide the case. In answer to that argument, as we have pointed out above,

he is no longer judge of that court and has no more authority to act as judge of the same than any other person. His authority was "vacated" and terminated and extinguished to act as judge in said district, after the 1st of July, 1914.

The question presented by the petitioners here has already been decided by this court. In the case of *United States vs. Soler*, 6 Phil. Rep., 321, the court, speaking through the late Mr. Justice Willard, said:

"The seventh assignment of error in the brief of the appellant is to the effect that the judgment is void because the judge who tried the case had ceased to be the judge of the Court of First Instance of Sorsogon at the time he signed the judgment, and at that time was the judge of the Court of First Instance of the Eleventh Judicial District, the Province of Sorsogon being included in the Eighth Judicial District. It is admitted in the brief of the Solicitor-General that on the 30th day of April, 1904, when the judgment was signed, the judge who signed it was not the judge of the district court in which the action was pending. We think that this assignment of error must be sustained * * *.

"The judgment of the court below is set aside and the case is remanded for a new trial. Upon the new trial it will not be necessary to retake the evidence already taken and appearing in the record, but the parties will be at liberty to present such other evidence as they see fit, with the costs of this instance de officio."

See also *U. S. vs. Singuimuto*, 3 Phil. Rep., 176.

In the case of *United States vs. Macavinta*, 8 Phil. Rep., 447, this court held that: "A judge who hears a part of the testimony and leaves the jurisdiction of the court where the cause was being tried before the same is finally closed and submitted, has no jurisdiction to impose a sentence in said cause."

In that case, from the record it appears that the Honorable Mariano Cui heard a part of the proof presented. Before the close of the trial he was transferred to another district and the Honorable W. F. Norris was appointed as the regular judge. The case was again called up for trial and the parties litigant renounced their right to present further proof. Whereupon the said Norris ordered a transcription of the notes taken by the stenographer during the trial of the cause and remitted the same to the Honorable Mariano Cui, who had heard the evidence during the trial of the cause, in order that he might prepare the sentence. Later the said Cui, while he was judge of another district, prepared the sentence in said case, finding the defendant guilty of the crime charged. From that sentence the defendant appealed to this court. In this court the defendant and appellant contended that the said Honorable Mariano Cui had no jurisdiction to prepare the sentence, not having concluded the trial.

After a consideration of the assignments of error made by the appellant, this court said: "The Honorable Mariano Cui did not have jurisdiction over the said cause at the time it was submitted to the court of said province, he had no authority or jurisdiction to render the decision therein, and for this reason the said sentence is reversed and the case is hereby ordered to be remanded to the Court of First Instance of the Province of Capiz, with direction that the judge thereof render such sentence in the cause as the record and evidence justify."

See also the case of *U. S. vs. Autiz*, 10 Phil. Rep., 233.

If then a judge who has been transferred or changed from one court or province to another, cannot decide a case which he tried, but had not yet decided before his transfer, how can the "present judges" whose positions have been vacated continue to take jurisdiction of "pending decisions?" In view of the above-quoted decisions of this court, the question contains its own answer. The mere fact that a judge happened to be reappointed cannot change the result, unless he happens to be assigned to the same district or province. In the latter case it will, of course, be his duty to dispose of the case.

There is not a word nor a single provision in said Act (No. 2347) which tends to show or to intimate that the

Legislature intended to establish, in the place of the existing courts, other and different Courts of First Instance. Said Act changed the personnel of the judges of the existing Courts of First Instance only.

In the case of Santos vs. Johnson, 6 Phil. Rep, 473, this court, speaking through Mr. Chief Justice Arellano, said:

"It appearing that the defendant judge was not at that time the judge of the province in question, we hold that he properly refused to sign and certify the bill of exceptions [presented to him in a case which he had tried. The certification and signing of a bill of exceptions are jurisdictional acts which cannot be executed by one who has no jurisdiction over the matter on account of his having ceased to be the judge of the court in which the case was tried by him as such judge. He has no right to exercise any jurisdiction in a court of which he has ceased to be the judge. (Enriquez vs. Watson, 3 Phil. Rep., 279; Ricamora vs. Trent, 3 Phil. Rep., 137; Osmena vs. Gorordo, 5 Phil. Rep., 37.)"

In a very recent case decided by this court (Mapiot vs. Mapiot, R. G. No. 7748, not reported), one judge heard all of the proof submitted and later another judge decided the case, without any objection from either of the parties, upon the proof theretofore submitted, and the decision of the lower court was affirmed by the Supreme Court. Many more instances might be given showing where one judge of the Court of First Instance had heard a part or all of the proof in a particular case, and where the decision was rendered by another judge upon the same, and in some instances, additional proof.

We do not believe that it was the intention of the Legislature to provide that a judge whose position had been vacated on the 1st of July, 1914, and who had been appointed and transferred to another district as judge, should continue to act in his original district and to continue to have jurisdiction of cases, criminal or civil, theretofore pending before him. It is our opinion that one who has been judge of the court of a particular district and who is afterwards appointed judge of another district, has no authority, after he becomes judge of the latter district, to take any action in cases pending in the former district, at the time he retired therefrom.

For all of the foregoing reasons, we are of the opinion and so hold that the petitioners are not entitled to the writ of mandamus as prayed for. The demurrer is therefore hereby sustained, with costs against the petitioners.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

Trent, J., concurs in the result.

CONCURRING

CARSON, J.,

I concur. Whatever may have been the effect of the legislative enactment in vacating the office of the respondent judge on the first day of July, and without expressing any opinion in that regard, it not being necessary for the proper disposition of this case, I am of opinion that, it affirmatively appearing that he did in fact vacate the office of judge of the Court of First Instance of the Province of Pampanga on that date, he cannot now be compelled by mandamus to assume jurisdiction to act in any matter pending in that court at that time.

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