

THE UNITED STATES, PETITIONER, VS. THE HONORABLE JOSE C. ABREU, PONCIANO REMIGIO, JOSE LEON, JOSE GOMEZ ARGE, ANTONIO DIZON, AND LUCAS GUEVARA, RESPONDENTS.

G.R. No. 10252. March 26, 1915

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PER CURIAM:

This is an application for the writ of mandamus. Its purpose is to order and to require the respondent judge to continue with the disposition and to decide a case which had been theretofore tried by another judge. The facts upon which the petition is based are as follows:

First. That on the 6th day of December, 1913, the auxiliary fiscal of the city of Manila presented a complaint charging the respondents, Ponciano Remigio, Jose Leon, Jose Gomez Arce, Antonio Dizon, and Lucas Guevara, with the crime of estafa.

Second. That upon the complaint the said respondents were duly arrested, arraigned, and placed upon trial on the 10th day of January, 1914, before the Honorable Charles S. Lobingier, then one of the judges of the Court of First Instance of the city of Manila, presiding over the criminal branch of said court.

Third. That on the 23d day of January, 1914, said trial was closed and the said judge (Lobingier) ordered the stenographer to make a certified transcript of the stenographic notes taken during the trial, and to deliver a copy to each of the parties litigant.

Fourth. That said judge (Lobingier) required the prosecution to present its argument (supposedly in writing) within ten days after the receipt of said transcript of the proof, and that the defendants should present their arguments within ten days after the presentation of the argument of the prosecution.

Fifth. The stenographer completed the transcript of the stenographic notes on the 7th day of April, 1914.

Sixth. That on the 14th day of May, 1914, the prosecution presented its argument, as required by the order of Judge Lobingier of the 23d day of January, 1914; that the defendants have failed to present or submit their arguments.

Seventh. That on the 14th day of February, 1914, the said Charles S. Lobingier, after being duly appointed, became judge of the United States District Court in China.

Eighth. That on the 1st day of July, 1914, the Honorable Jose C. Abreu became one of the judges of the Court of First Instance in the city of Manila, presiding over the criminal branch thereof.

Ninth. That on the 7th day of July, 1914, the prosecuting attorney of the city of Manila presented a motion in said cause, asking the respondent judge to fix a date for the decision of the same, after hearing the defendants and the presentation of new proof, if the parties so desired, which motion has not yet been decided.

Tenth. That on the 18th day of August, 1914, the prosecuting attorney of the city of Manila withdrew the motion

presented in the preceding paragraph, and presented a new motion, praying that the said judge decide said criminal cause in accordance with the proof already presented; that due notice was given to all the interested parties of said motion, and the same was brought on for hearing on the 21st day of August, 1914, before the respondent judge, the Honorable Jose C. Abreu; that the said respondent judge, after hearing said motion (of the 18th of August, 1914), decided, on the 9th day of September, 1914, that, in accordance with the provisions of Act No. 2347, he was without jurisdiction to decide said cause and therefore denied the same.

Eleventh. That the petitioner is without other plain, speedy, and adequate remedy.

Upon the foregoing facts, the petitioner prayed that this court issue the writ of mandamus, ordering and requiring the respondent judge to decide said criminal cause upon the proof already taken.

To said application or petition, containing the foregoing facts, the defendants or respondents presented a demurrer, upon the ground "that said petition does not state facts sufficient to constitute a cause of action, in that it alleges that the jurisdiction of Judge Abreu is based upon Act No. 2347, and that the action of which it is sought to compel him to assume jurisdiction was tried by the judge of a court superseded by Act No. 2347."

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

Upon the foregoing facts and the demurrer, we have the question presented, whether or not, under the provisions of Act No. 2347, a judge who was appointed as such and became judge of a particular district, province, or court, may be compelled by mandamus to decide a case which had theretofore been tried by another judge.

It appears from the record that the cause of *The United States vs. Ponciano Remigio et al.* had been tried before the Honorable Charles S. Lobingier; that all of the proof had been presented by the respective parties, the prosecution and defense, and that the cause was pending decision only.

In support of said demurrer, the respondent judge, through his attorney, in his first argument says: "The demurrer to the petition raises the proposition of law whether a Court of First Instance, organized and acquiring its jurisdiction by virtue of Act No. 2347, has power to make findings of fact and render sentence thereon in a criminal cause tried and pending decision in a Court of First Instance that was superseded by Act No. 2347,"

He further argues that: "The courts organized under the new law are the successors of the courts existing under the old law, and the new courts acquire their jurisdiction solely from the Act creating them and the appointment of judges thereunder."

The learned counsel, in the question presented and in his argument in answer thereto, seems to confuse the term courts, as used in said law, with that of judges, used in the same law. He cites the last paragraph of section 1 of Act No. 2347 in support of his argument.

In the case of *Pamintuan vs. Llorente and Dayrit* (29 Phil. Rep., 341), we held, under section 7 in relation with section 24 of Act No. 2347, that the judges of the Courts of First Instance, who had been acting as such prior to the 1st of July, 1914, ceased to be judges of said courts on said date, and were without authority to continue to act in any manner whatever in cases theretofore pending, unless and until they had been reappointed as such judges, in accordance with the provisions of said Act. We further held that the judge of a particular district or province who had been reappointed on or after the 1st of July, 1914, but who had been assigned to a different district or province, was without authority or power to continue to take jurisdiction or cognizance, in any manner whatever, of any case which had been theretofore pending before him in his original district or province.

The learned counsel in his argument assumes that not only had the judges ceased to have any judicial authority but that the Courts of First Instance themselves had been reorganized and that new Courts of First Instance had

been established in their stead. In support of that particular argument, he cites the provision found in the last paragraph of section 1 of said Act. The Courts of First Instance of the Philippine Islands were organized and given certain jurisdiction by virtue of the provisions of Act No. 136 of the Philippine Commission. We find nothing in Act No. 2347 which indicates or tends to indicate that it was the intention of the Legislature to abolish the Courts of First Instance existing prior to the 1st of July, 1914, and to establish in their stead other Courts of First Instance. In fact, it appears from every corner of said Act quite the contrary. Even the last paragraph of the first section seems to indicate clearly that the Legislature did not intend to abolish the old Courts of First Instance and to establish new ones. Said paragraph, among other things, provides that: "Said judges (the new judges) shall have the same jurisdiction and competency as conferred by existing law upon the Courts of First Instance, in addition to that conferred upon them by section ten of this Act."

The additional jurisdiction conferred upon the Courts of First Instance is the jurisdiction theretofore exercised by the Court of Land Registration. It seems to be clear, from said quoted provision of said paragraph, that the Legislature intended to leave the existing Courts of First Instance with exactly the same jurisdiction as that theretofore exercised by them with the one additional jurisdiction only.

The contention that the old Courts of First Instance were not changed or superseded and that said Act No. 2347 affected the judges only, seems to be further supported by the provisions of said section 24 of said Act. Said section provides that: "All criminal or civil cases, in the present Courts of First Instance at the time when this Act takes effect, shall remain under the jurisdiction of said courts (the old Courts of First Instance) until their final decision."

The respondent, in referring to said quotation of Act No. 2347, says: "This (shall remain under the jurisdiction of the old courts) is equivalent to declaring that actions that had been tried by the old courts, but had not been decided, which was the status of the action involved in these proceedings, did not fall within the jurisdiction of the new courts."

We think the respondent commits a serious error in his interpretation of said Act by concluding that the same destroyed the Courts of First Instance existing prior to the 1st of July, 1914, and established in their stead new courts.

In the case of *Pamintuan vs. Llorente and Dayrit* (supra) this court decided that: "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., '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."

If, then, the Courts of First Instance, as theretofore existing, had not been changed, but the personnel of the judges only, what was the status of the actions theretofore commenced and pending on the 1st day of July, 1914?

Section 24 of said Act provides that: "All * * * cases and all judicial proceedings 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."

By said provision it clearly appears that it was the intention of the Legislature to continue all cases which were pending decision or sentence under the jurisdiction of said courts (the old courts) until their final decision. That being true, what were the duty and obligation of the new judges who had succeeded the former judges of said

courts? Suppose, for example, that a judge had been acting in a particular district or province prior to the 1st day of July, 1914, and had vacated his position by virtue of said Act, but had been reappointed and assigned to the same district or province, might he continue with the trial and decision of any particular case which was pending decision or sentence, or pending continuance of the evidence, on the 1st day of July, 1914? That question, it would seem, must necessarily be decided in the affirmative. We held, in the case of *Pamintuan vs. Llorente and Dayrit* (supra), that he could not continue with the "decision or sentence, or a continuance of the evidence," notwithstanding that he had been reappointed, if he had been assigned to another district or province. In our opinion, it was the intention of the Legislature to put the judges appointed, under and by virtue of said Act (No. 2347), into the shoes of the judges who had been therefore occupying the bench in the different districts or provinces, whether the new appointment or new assignment put the same judge or a new judge back into the same district or province, with authority to render a decision or a sentence or to continue with the evidence, in whatever status the cause might be then existing, until its final decision. In other words, after the 1st day of July, 1914, by virtue of said law, each of the Courts of First Instance had presiding over it a judge, perhaps the same judge who had been theretofore presiding, under a new assignment or appointment, with exactly the same powers, duties, and obligations, with reference to and over all cases, pending decision or sentence or pending continuance of the evidence, which the judge occupying the bench in said particular district or province would have had had said Act No. 2347 not been passed, with the additional jurisdiction, duties, and powers which had been theretofore exercised by the Court of Land Registration. What possible objection, based upon sound reason, can be urged against allowing the new judge to decide cases pending decision or sentence or to continue to hear the evidence in cases in which the trial had been already commenced before the 1st day of July, 1914? Certainly it was not the intention of the Legislature, when it required that all judges appointed prior to the 1st day of July, 1914, vacate their positions on the 1st day of July, 1914, to annul and render void all that had been done in the then existing cases pending decision or sentence or a continuance of the evidence. The Legislature certainly did not intend that the parties litigant should be required to incur the additional cost of a recommencement of their actions or a retrial of the same, in case the trial had been completed, or to commence de novo any trial of a cause which had been partly tried. The law itself, in our judgment, expressly repudiates the fact that the Legislature so intended. The Legislature, by the law, expressly states that "all cases pending decision or sentence, or continuance of the evidence, shall remain under the jurisdiction of said courts." As was said above, what possible objection, in reason and sound judgment, can be interposed against said conclusion? This court has, in numerous cases criminal as well as civil, granted a new trial, even after decision and sentence in the lower court and appeal to this court, with the express provision that the cause should be remanded to the lower court to take additional evidence only, and that the evidence theretofore presented should remain, and that the judge (the same or another) should decide the case, taking into consideration the evidence theretofore presented in relation with the new evidence which might be presented during the new trial. And this was done before Act No. 2347. (*U. S. vs. Singuimuto*, 3 Phil. Rep., 176, 184; *U. S. vs. Dacir*, 26 Phil. Rep., 503.) This court has frequently decided that a judge, who has been transferred from one district to another, lost all judicial authority or right to continue with the disposition or decision of a case, in any manner whatever, after such transfer. (*Ricamora vs. Trent*, 3 Phil. Rep., 137; *Enriquez vs. Watson & Co.*, 3 Phil. Rep., 279; *Osmena vs. Gorordo*, 5 Phil. Rep., 37; *U. S. vs. Soler and Melliza*, 6 Phil. Rep., 321; *Santos vs. Johnson*, 6 Phil. Rep., 473; *U. S. vs. Macavinta*, 8 Phil. Rep., 447; *U. S. vs. Autiz*, 10 Phil. Rep., 223; *Mapiot vs. Mapiot*, Case No. 7748 (not reported); *Pamintuan vs. Llorente and Dayrit*, 29 Phil. Rep., 341.)

In the present case each of the parties had presented all of the proof he desired to present. Each of the parties had had an opportunity to hear and to cross-examine the witnesses presented by the other. All of the testimony was reduced to writing. Each of the parties had been furnished with a copy of said testimony. It might be urged that the judge who is now called upon to decide the case did not hear or see the witnesses. That, of course, might or

might not be an advantage to the judge who is called upon to decide the case. It is not, however, a prerequisite. (Secs. 504, 505, 497, Act No. 190.)

The present is not the only case which has been brought to this court in which a judge, other than the one who heard the evidence, was called upon to decide the case. (*Ortiz vs. Aramburo*, 8 Phil. Rep., 98; *U. S. vs. Macavinta*, 8 Phil. Rep., 447; *U. S. vs. Mariano*, 27 Phil. Rep., 132.)

In the case of *Ortiz vs. Aramburo* (8 Phil. Rep., 98), the question presented was exactly analogous to that presented here. In that case, this court, speaking through the late Mr. Justice Willard, said: "It is claimed by the defendants and appellants that the judgment rendered against them is void because the judge who decided the case did not see the witnesses when they gave their testimony. This, in last analysis, is the basis of the appellants' objection. It is not claimed that the judge who decided the case did not have before him all the evidence that was ever presented therein.

"This objection cannot be sustained. The law requires cases to be tried by the Court of First Instance. There is no provision of law which prohibits a judge from deciding a case because he did not see some of the witnesses when they testified therein. In the absence of any express prohibition of this kind, we cannot imply one. During the Spanish domination, it was the invariable practice for the judges of the Courts of First Instance to decide cases whether the evidence was taken before them or not. Our present Code of Civil Procedure authorizes the same practice in several instances. It authorizes the presentation of evidence by depositions, and it might well happen that all the evidence in the case would consist of such depositions and that the judge who decided it would see none of the witnesses. Section 505 of the Code of Civil Procedure provides that when a new trial is ordered by the Supreme Court 'all the evidence taken upon the former trial, which is competent and admissible, shall be used upon the new trial without retaking, but additional evidence may be presented upon the second trial by either party.' Section 504 of the same code provides that when a new trial is ordered the Supreme Court may direct that it be had before a judge other than the one who tried the case before. This is an express authority for a judge of the Court of First Instance to decide a case upon oral evidence which was not taken before him.

"Section 497 of the same code provides that, when a motion for a new trial is made in the court below on the ground of the insufficiency of the evidence, and denied, this court may review the evidence and enter a final judgment. This expressly authorizes us to decide questions of fact upon evidence which was not taken before us."

In that case (*U. S. vs. Macavinta*) the Honorable Mariano Cui heard a part of the proof. Before the close of the trial he was transferred to another district and the Honorable W. F. Norris was appointed as the regular judge. After Judge Norris took charge of said court, the case was again called up for trial, and the parties litigant renounced their right to present further proof. Thereupon Judge Norris ordered a transcript of the notes taken by the stenographer during the trial of the cause, and remitted them to Judge Cui, in order that he might prepare the sentence. Later Judge Cui, while he was the judge of another district, prepared the sentence 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 Judge 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 had no jurisdiction over said cause at the time it was submitted to the court; that he had no authority or jurisdiction to render a decision therein, and for that reason said sentence is reversed (revoked) and the case is hereby ordered to be remanded to the Court of First Instance with direction that the judge thereof render such sentence in the case as the record and the evidence justify." (*U. S. vs. Autiz*, 10 Phil. Rep., 223.)

The difficulty which a judge may have in deciding a case in which he has not seen or heard the witnesses, is not an insurmountable one. The lawyers, who are officials of the court, saw and heard the witnesses and are capable

of calling the attention of the court to any conflict in the testimony of a particular witness which would indicate that his testimony was reliable or unreliable. And, moreover, it frequently happens that after the trial of a case is completed, new lawyers are called into the case to present an argument to the court, based upon the evidence taken during the trial of the case. If, then, lawyers, who are officials of the court, can confidently justify the preparation and presentation of an argument, based upon the evidence, without having seen or heard the witnesses, and can feel that they can properly ascertain the preponderance of the evidence, it would seem that the judge, with the assistance of both the transcript of the evidence and the argument of learned counsel, should not hesitate to attempt to arrive at the real facts contained in such evidence. And, moreover, perhaps 90 per cent of the cases appealed contain questions of fact to be decided by the appellate court, which must arrive at its conclusions from an examination of the evidence, without the advantage of having seen and heard the witnesses. Not only that, but the parties litigant do not hesitate, even when a question of fact is presented by their appeal, to employ new attorneys in the appellate court, believing that it is possible for them, from a reading of the evidence, without having seen or heard the witnesses, to arrive at a just conclusion concerning what are the real facts contained in the record and to submit the cause to the appellate court. Seeing and hearing witnesses is not an absolute prerequisite to the trial of a cause. There is no law requiring it. In fact, there is no law requiring the defendant himself to be present during the trial of the cause. It is a right which he may exercise. Of course, he cannot be excluded. The only time when he must be present is when judgment is pronounced, and even that is not necessary when he is charged with a misdemeanor only.

We find no good reason, either in justice or law, except a mere technical one, for holding that a judge other than the one who heard the evidence, adduced during the trial of the cause, may not, by the assistance of counsel, arrive at a correct conclusion based upon such evidence. And if, perchance, the respective attorneys discover that the preponderance of such evidence supports a different conclusion than that arrived at by the judge, such errors may be corrected by appeal. This is certainly true in case the defendant is convicted. If he happens to be acquitted, certainly he is without just cause for complaint on account of the procedure adopted. And even if he is convicted, appeals, and is again found guilty, he still may have resort to the executive department of the Government, for pardon, where again he may present the question of his guilt or innocence. That department of the Government is daily passing upon the rights of men charged with crime, without seeing or hearing the witnesses.

Suppose, for example, that a judge of the Court of First Instance should resign during the pendency of an action and after he had heard a part or all of the evidence, is there any sound reason why his successor should not take up the case at that point and continue it and finally dispose of it? Before the days when complete stenographic records were kept of everything which transpired during the trial of a cause, there might have been some reason for answering this question in the negative. The lack of a complete record was evidently the basis for the establishment of a contrary rule. But today, when stenographers are employed in the courts in the trial of cases and when a complete, authentic record of everything that transpires during the trial is kept and when, from said record, every one who runs may read, as well as another, said record, and be informed fully of every act, objection, or exception taken or made during the trial, there seems to be but little reason for asserting that one qualified person may not be able to reach a just and fair conclusion from said record as well as another. Every person may ascertain for himself the correctness of any disputed fact in said record. (*Enriquez vs. Watson & Co.*, 3 Phil. Rep., 279.)

In courts of equity it never was the practice for the chancellor to hear and see the witnesses. The proof was generally taken before a commissioner and after the completion of the same, together with the other parts of the record, it was referred to the chancellor for decision. Some of the most important rights which men are heir to are tried in courts of equity.

Of course, what we have said relating to the right of one judge to decide a question of fact, based upon evidence taken before another, could not apply where a jury assisted in the trial. It is the duty, generally, of a jury to make the finding of facts.

During the past ten years numerous indictments have been presented at the court of public opinion, by both the bar and the laity, against the courts of the United States, for the reason that they have allowed all kinds of technicalities, without rhyme or reason, to creep into the administration of justice, to the great detriment of parties litigant and at great cost to the taxpayers. Mr. William H. Taft, ex-President, ex-judge, and one of the great jurists, is not the least of those who has sustained this indictment. We hope that there may never be an occasion for the just presentation of this complaint against the administration of justice in these Islands.

For all of the foregoing reasons, we are of the opinion and so hold that the petitioner is entitled to the writ of mandamus as prayed for. The demurrer is, therefore, hereby overruled with costs. So ordered.

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

Carson, J., dissents.

Trent, J., dissents and will file a separate opinion.

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