T. L. MCGIRR, PLAINTIFF, VS. L. PORTER HAMILTON AND JOSE C. ABREU, JUDGE OF FIRST INSTANCEOF MANILA, DEFENDANTS.

G.R. No. 10577. March 30, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action for a mandamus to compel the Court of First Instance of the city of Manila to allow an appeal from a judgment entered after the trial of an action of debt brought to it from the justice's court of the city of Manila where the action had been originally begun and tried.

The action in the justice's court was to recover the sum of P599 for service rendered. The trial resulted in a judgment in favor of the plaintiff for P466 and costs. Appeal was taken to the Court of First Instance where the action was tried de novo and judgment was for plaintiff for P465.70. The defendant excepted to the judgment and served notice of his intention to perfect a bill of exceptions to the Supreme Court. The bill was duly prepared and presented for the approval of the court as required by law. Approval was denied on the ground that no appeal lay to the Supreme Court for the reason that the action having been begun in the justice's court the judgment of the Court of First Instance was final, there not having been in question during the trial of the action the constitutionality or validity of a statute or municipal ordinance.

The defendants in the action for mandamus base the right of the Court of First Instance to refuse approval of the bill of exceptions on Act No. 3627, section 16 of which provides, with reference to an appeal in a civil action from a judgment of a justice's court to the Court of First Instance, as follows:

> "Judgments rendered by the Court of First Instance on appeal shall be final and conclusive except in cases involving the validity or constitutionality of a statute or municipal ordinance."

This provision, argue the defendants, is conclusive of the pretension of the plaintiff that he is entitled to have the judgment of the Court of First Instance reviewed by the Supreme Court, inasmuch as, the action having originated in the justice's court, the judgment of the Court of First Instance on appeal is final and conclusive, the validity or constitutionality of a statute or municipal ordinance not being involved.

The plaintiff, on the other hand, alleges that the provision of Act No. 1627 just quoted is invalid in that it deprives the Supreme Court of a part of the jurisdiction which it had at the time the act of July 1, 1902, became effective, and which jurisdiction was confirmed and established by that act; that said act of Congress having defined and established the jurisdiction of the Supreme Court, the Philippine Legislature has no authority to reduce or diminish the jurisdiction so defined and established; and that, in so far as Act No. 1627 accomplishes such a result, it is repugnant to the act of Congress and is without effect.

We are of the opinion that plaintiff's contention is well founded.

Section 18 of Act No. 136 provides:

> "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."

Section 143 of the Code of Civil Procedure, speaking with respect to judgments of the Courts of First Instance, provides in part:

> "Upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments, made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment."

Section 496 of the same code, which deals with the power, authority and jurisdiction of the Supreme Court in appeals from judgments of the Courts of First Instance, provides:

> "The Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse, or modify any final judgment, order, or decree of a Court of First Instance, regularly entered in the Supreme Court by bill of exceptions, or appeal, and may direct the proper judgment, order, or decree to be entered, or direct a new trial, or further proceedings to be had, and if a new trial shall be granted, the court shall pass upon and determine all the questions of law involved in the case presented by such bill of exceptions and necessary for the final determination of the action."

These provisions, which confer jurisdiction on the Supreme Court and regulate the exercise thereof, were in existence and in full force and effect at the time the act of Congress of July 1, 1902, was passed.

From these citations it appears clear that it was the intention of the Philippine Commission to confer on the Supreme Court appellate jurisdiction with respect to all judgments pronounced by the Courts of First Instance of the Philippine Islands. Section 18 of Act No. 136 provides, as we have seen, that the Supreme Court shall have appellate jurisdiction of "all actions and special proceedings" brought to it from the Courts of First Instance; and the provisions of the Code of Civil Procedure clearly contemplate that the Supreme Court shall have appellate jurisdiction with respect to all final judgments of Courts of First Instance. No distinction is made, either in Act No. 136 or in the Code of Civil Procedure, between judgments pronounced by a Court of First Instance on appeal from a judgment rendered by a Justice's court and those rendered in an action begun originally in that court. In the case of Eleizegui vs. Lawn Tennis Club (1 Phil. Rep., 303), the Supreme Court had before it the precise question under discussion. In that case the action was originally begun in the justice's court of Manila. An appeal was taken to the Court of First Instance where the action was again tried. The defendant appealed from that judgment to the Supreme Court, where a motion was made by the appellee to dismiss the appeal on the ground that the action having been begun in the justice's court no appeal would lie beyond the Court of First Instance; in other words, as the court put it, "the appellee has moved the court to dismiss the appeal taken against the judgment rendered by the Court of First Instance of Manila, upon the ground that the Supreme Court is without jurisdiction in cases tried by the Court of First Instance in the exercise of its jurisdiction over cases appealed from justice courts." Discussing the question presented the court said:

> "Article 143 of the Code of Civil Procedure provides that upon the rendition of a final judgment by a Court of First Instance disposing of the action either of the parties shall be entitled to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments made in the action to which the party has duly excepted at the time of making such ruling, order, or judgment. No limitation whatever has been fixed with respect to the right of the parties to appeal against a judgment of a Court of First Instance, nor has any distinction been made as to whether the case was commenced in the Court of First Instance or whether it was brought before it by appeal from a justice court. We hold that article 143 confers jurisdiction upon the Supreme Court in all cases of final judgments rendered by the Court of First Instance, either in the exercise of its original jurisdiction or its appellate jurisdiction."

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The case just cited defines the jurisdiction which the Supreme Court had under Philippine statutes and codes at the time the act of Congress of July 1, 1902, was passed and, consequently, the jurisdiction established by that act.

Section 9 of that act provides in part as follows: "That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said Government to change the practice and method of procedure."

It is undoubted that the Philippine Legislature has no authority to legislate on a subject fully covered by an act of Congress and particularly no authority to modify in a material way an act of that body. (U. S. vs. Bull, 15 Phil. Rep., 7.) The Congress of the United States being the sovereign authority in the Philippine Islands, its decrees become the fundamental law of the Archipelago and are not subject to modification or alteration by local authority. The Supreme Court was reestablished by the Act of Congress of July 1, 1902, its jurisdiction defined, and neither the court nor its jurisdiction can be interfered with by the Philippine Legislature. We, therefore, hold that that portion of Act No. 1627 which prohibits an appeal to the Supreme Court from a judgment of the Court of First Instance pronounced in a civil cause appealed from a justice's court is in violation of the act of Congress of July 1, 1902, and is, therefore, of no effect.

The question has been raised relative to the power of the Supreme Court to declare a statute invalid after it has recognized and applied it for a considerable number of years.

It is true that that portion of Act No. 1627 to which we are directing our attention has been applied by this court in several cases; but the point to be kept in mind is that this is the first time that its validity has been called in question in this court. It is the general rule that a court will not "pass upon a constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the cause. * * * While courts cannot shun the discussion of constitutional questions when fairly presented, they will not go out of their way to find such topics. They will not seek to draw in such weighty matters collaterally, nor on trivial occasions. It is both more proper and more respectful to a coordinate department to discuss constitutional questions only when that is the very lis mota. * * * Prima facie, and upon the face of the Act itself, nothing will generally appear to show that the Act is not valid; and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power to pronounce it void, as to him, his property or his rights, that the objection of unconstitutionally can be presented and sustained." (Cooley on Constitutional Limitations, p. 196; Parker vs. State, 133 Ind., 178; Macon & W. R. R. Co. vs. Davis, 13 Ga., 68.)

As we have already said, in the cases in which Act No. 1627 has been applied the question of the validity of the Art was not raised; and the resolution of that question not being the lis mota, not being necessary to the determination of the particular case, it was never considered and, of course, never decided. The mere fact that the law has been applied and given full force and effect precisely the same as if it were valid does not deprive this court of the power to pass on the validity of the law when the occasion arises.

In the case of United States vs. Sanges (144 U. S., 310), the court, having as one of the questions before it for decision the power of the court to declare in a particular case its lack of jurisdiction over the subject matter of the action when on previous occasions it had taken jurisdiction and disposed of similar cases, stated at page 319:

> "The appellate jurisdiction of this court rests wholly on the Acts of Congress. For a long time after the adoption of the Constitution, Congress made no provision for bringing any criminal case from a circuit court of the United States to this court by writ of error. At February term, 1803, indeed, this court, no objection being made, took jurisdiction of a writ of error sued out by the United States to the circuit court for the District of Columbia in a criminal case. (United States vs. Simms, 1 Cranch, 252.) But at February term, 1805, in a like

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> case, this court, upon full argument and consideration, held that it had no jurisdiction of a writ of error in a criminal case, and overruled United States vs. Simms, Chief Justice Marshall saying: 'No question was made in that case as to the jurisdiction. It passed sub silentio, and the court does not consider itself bound by that case.' (United States vs. More, 3 Cranch, 159, 172. And it was thenceforth held to be settled that criminal cases could not be brought from a circuit court of the United, States to this court by writ of error, but only by certificate of division of opinion upon specific questions of law. (Ex parte Kearney, 7 Wheat., 38, 42; Ex parte Gordon, 1 Black, 503; Ex parte Yarbrough, 110 U. S., 651; Farnsworth vs. Montana, 129 U. S., 104, 113; United States vs. Perrin, 131 U.S., 55.)"

Further discussing this question the court said at page 320: "At October term, 1885, this court, without objection, decided upon the merits a writ of error to the supreme court of the Territory of Utah by one convicted of a crime which was neither bigamy nor polygamy, nor punishable with death. But at the same term, after argument upon its jurisdiction of a like writ of error, the court dismissed both writs of error, and, in answering the objection that it had taken jurisdiction of the first writ, said: 'The question of jurisdiction was not considered in fact in that case, nor alluded to in the decision, nor presented to the court by the1 counsel for the United States, nor referred to by either party at the argument nor in the briefs. Probably both parties desired a decision on the merits.' (Cannon vs. United States, 116 U. S., 55, and 118 U. S., 355; Snow vs. United States, 118 U. S., 346, 354.)"

The same question was under consideration in the case of Cross vs. Burke (146 U. S., 82), where the court said concerning it:

> "It was to this act that Mr. Justice Miller referred in Wales vs. Whitney (114 U. S., 564, 565), as restoring 'the appellate jurisdiction of this court in habeas corpus cases from decisions of the Circuit Courts, and that this necessarily included jurisdiction over similar judgments of the 'supreme court of the District of Columbia.' But the question of jurisdiction does not appear to have been contested in Wales vs. Whitney, and where this is so the court does not consider itself bound by the view expressed. (United States vs. Sanges, 144 U. S., 310, 317; United States vs. More, 3 Cranch, 159, 172.)"

To the same point we might cite the case of Louisville Trust Co. vs. Knott (191 U. S., 225), where the court reiterated the doctrine laid down in the cases already decided:

> "It is proper to observe that this court in Shields vs. Coleman (157 U. S., 168, 177), assumed jurisdiction upon direct appeal from a Circuit Court in a case involving the question whether that court had authority to appoint a receiver of property which was at the time in the possession of a receiver appointed by a state court. As the Federal court had, in that case, taken property out of the physical possession of a receiver of the state court, this court expressed its views upon the question whether the possession of the state court should have been disturbed by the Federal court, and it rendered judgment accordingly. But the precise question here presented as to the jurisdiction of this court under the act of 1891, on direct appeal from the Circuit Court, was not there raised or considered. In United States vs. More (3 Cr., 159, 172 [1805]), it was held that this court was without jurisdiction, under the law as it the was, to review the final judgment of the Circuit Court of the District of Columbia in a criminal case. It was suggested at the bar, in that case, that this court had, in a previous case, exercised appellate jurisdiction in a criminal case. Chief Justice Marshall met that suggestion by saying: 'No question was made in that case as to the jurisdiction. It passed sub silentio, and the court does not consider itself as bound by that case.' To the same effect, substantially, are United States vs. Sanges (144 U. S., 310, 19) ; and Cross vs. Burke (146 U. S., 82)."

Relative to the theory that Act No. 1627 has stood so long and been silently acquiesced in for so great a length of time that it should not be disturbed, it may be said that the fact that certain individuals have, by ignorance or neglect, failed to claim their fundamental rights, furnishes no reason why another individual, alert to his rights and their proper enforcement, should be prevented from asserting and sustaining those rights. The fact that Smith and Jones have failed to demand their constitutional rights furnishes no basis for the refusal to consider and uphold the

constitutional rights of Richard Roe. In the case of Sadler vs. Langham (34 Ala., 311), this same question was under consideration and the court in resolving it said:

> "It may be urged, that these statutes have stood, and been silently acquiesced in for so great a length of time, they should not now be disturbed. We are sensible of the force of this argument. It will be observed, however, that in Tennessee, the decision which declared the private road law unconstitutional was pronounced forty years after the enactment of the statute; and in New York, after seventy years had elapsed. It is, perhaps, never too late to reestablish constitutional rights, the observance of which had been silently neglected."

It may not be out of place to close this decision with the words of one of New York's greatest judges as found in the case of Oakley vs. Aspinwall (3 Comstock [N. Y.], 547, 568):

> "It is highly probable that inconveniences will result from following the constitution as it is written. But that consideration can have no weight with me. It is not for us, but for those who made the instrument to supply its defects. If the legislature or the courts may take that office upon themselves; or if under color of construction, or upon any other specious ground, they may depart from that which is plainly declared, the people may well despair of ever being able to set a boundary to the powers of the government. Written constitutions will be worse than useless.
>
> "Believing, as I do, that the success of free institutions depends on a rigid adherence to the fundamental law, I have never yielded to considerations of expediency in expounding it. There is always some plausible reason for the latudinarian constructions which are resorted to for the purpose of acquiring power—some evil to be avoided, or some good to be attained, by pushing the powers of tho government beyond their legitimate boundary. It is by yielding to such influences that constitutions are gradually undermined, and finally overthrown. My rule has ever been to follow the fundamental law as it is written, regardless of consequences. If the law does not work well, the people can amend it; and inconveniences can be borne long enough to await that process. But, if the legislature or the courts undertake to cure defects by forced and unnatural constructions, they inflict a wound upon the constitution which nothing can heal. One step taken by the legislature or the judiciary in enlarging the powers of the government opens the door for another, which will be sure to follow; and so the process goes on, until all respect for the fundamental law is lost, and the powers of the government are just what those in authority please to call them."

The demurrer is overruled and the defendants given leave to answer within five days. If an answer is not filed within that time the plaintiff shall be entitled to the relief demanded in the complaint. So ordered.

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

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