

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO CRISTOBAL ET AL., DEFENDANTS. GREGORIO CRISTOBAL, APPELLANT.***G.R. No. 11401. August 23, 1916*

Ponente: JOHNSON, J.

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The question presented by this appeal is whether or not a municipal ordinance which prohibits persons engaged in fishing from closing up or obstructing in any way public navigable rivers, or esteros, or other watercourses or bodies of water located within the jurisdiction of the municipality, is constitutional. That is to say, is such an ordinance within the powers, general or special, of a municipality?

It appears from the record, that in violation of the provisions of municipal ordinance No. 42, as amended by resolution No. 42, "on or about the 17th of September, 1914, in the barrio of Pamugsuc, municipality of Lubao, Pampanga, P. I., the said accused, operating jointly and together, willfully, illegally, and feloniously, did build a dam, thus maliciously obstructing public navigation on the River Sugarul, in the municipality of Lubao, the said river being navigable and of public ownership; that the said dam was built for the purpose of converting the said river into a fishpond, to the prejudice of the municipality of Lubao."

The lower court found that the appellant had committed the acts charged in the complaint and sentenced him to pay a fine of P30.

The record further shows that the defendant and appellant had first been charged with a violation of said ordinance and had been convicted by the justice of the peace, and that he had appealed to the Court of First Instance.

From the judgment of the Court of First Instance the defendant appealed to this court upon the theory that the ordinance in question was adopted without authority on the part of the municipality and was therefore unconstitutional. The appellant argues that there was no proof adduced during the trial of the cause showing that said ordinance had been approved by the provincial board. Considering the provisions of law that it is the duty of the provincial board to approve or disapprove ordinances adopted by the municipal councils of the different municipalities, we will assume, in the absence of proof to the contrary, that the law has been complied with. We have a right to assume that officials have done that which the law requires them to do, in the absence of positive proof to the contrary. (2 Cyc. Pl. and Prac, p. 420; U. S. vs. Labial and Abuso, 27 Phil. Rep., 82; par. 14, sec. 334, Act No. 190.)

The appellant makes a feeble effort here to show that the land of the body of water in which the obstruction was placed by the appellant, belonged to him and that therefore the justice of the peace had no jurisdiction to determine the questions presented. That contention we do not believe is seriously made by the appellant, for the reason that it is asserted that the body of water in which said obstruction was placed was public water and subject to the control of the municipality, for certain purposes, and therefore the land occupied by said water did not

belong to the appellant. That contention of the appellant is frivolous and does not merit discussion here for the purpose of determining the jurisdiction of the justice of the peace over the question of the enforcement of said order.

Considering the general powers of municipal councils as defined in Act No. 82 and its amendments, we are of the opinion that the municipality in question was duly authorized to adopt the ordinance in question and the same is therefore constitutional. (U. S. vs. Joson, 26 Phil. Rep., 1; U. S. vs. Chan Tienco, 25 Phil. Rep., 89; U. S. vs. Garing, 28 Phil. Rep., 199; U. S. vs. Tamparong, 31 Phil. Rep., 321; U. S. vs. Pads, 31 Phil. Rep., 524.)

For all of the foregoing reasons, it is hereby ordered that the appeal be dismissed and that the cause be returned to the court from whence it came for an execution of the sentence heretofore ordered by the Court of First Instance, with costs against the appellant. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., see dissenting opinion.

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### DISSENTING OPINION

#### MORELAND, J.:

The appellant was charged with a violation of a municipal ordinance in the justice's court of the municipality of Lubao, Pampanga. He defended on the ground that the ordinance was unconstitutional in that it deprived him of property without just compensation and without due process of law. He was convicted<sup>^</sup> in the justice's court, appealed to the Court of First Instance, and was there again convicted. He then appealed to the Supreme Court under section 43 of the Code of Criminal Procedure which permits appeals to the Supreme Court only in cases "involving the validity or constitutionality of a statute or the constitutionality of a municipal or township ordinance."

The Supreme Court held the ordinance constitutional and then dismissed the appeal. This is the unaccountable part of the decision. How an appellate court can take cognizance, consider, and finally determine on the merits all of the questions presented by the appeal, and then dismiss the appeal itself, is something I cannot understand. If an appellant has presented questions on an appeal which the Supreme Court is not only bound to consider but actually considers and determines, the appellant is entitled to a judgment of the appellate court on those questions. Otherwise, he has nothing to show for his appeal, nothing settling his rights, nothing which he can enforce, and nothing with which he can protect himself after he has gone through an expensive litigation beginning with the justice's court and ending with the highest tribunal in the land. If, after that trouble and expense, he is not entitled to have a judgment of the Supreme Court finally defining his rights, then the administration of justice in the Philippine Islands is an idle and an empty ceremony.

As the case now stands, the appeal having been dismissed by the Supreme Court, the appellant has obtained absolutely nothing by his appeal—an appeal which the law authorized him to take, which this court admits as a proper and lawful appeal, which was presented to the appellate court in conformity with law and with the rules and regulations of that body, and which was duly considered and determined. Nevertheless, he stands without a judgment of this court to which he can refer as a definition of his rights and obligations. To be sure he has an opinion of this court which, if the court had a right to dismiss the appeal, it had no right to give; and, if given, was without binding force or effect on anybody or anything.

It should be noted, in the first place, that nobody moved to have the appeal dismissed. Certainly the appellant did

not do so as he was the one who brought the case to the appellate court and was the one who insisted on a final determination and adjudication of all the questions which he presented. The Government did not ask for a dismissal of the appeal as it well knew it had no grounds whatever on which a motion to dismiss could be based. Both parties filed briefs in this court, the appellant asking that the judgment of the Court of First Instance "be annulled and vacated," and the Government asking "the affirmance of the judgment appealed from."

What are the grounds upon which an appeal may be legally dismissed? Want of jurisdiction, defects going to the jurisdiction, defects in the proceedings for review, and want of an actual controversy, are the grounds, speaking generally, upon which an appeal will be dismissed over the opposition of the appellant. In the case of *Velasco vs. Rosenberg* (29 Phil. Rep., 212) this court said, with respect to the grounds upon which an appeal may be dismissed:

"The grounds on which an appeal may be dismissed are well settled. They do not include matters which go to the merits of the cause or to the right of the plaintiff or defendant to recover. Nor do they involve the sufficiency of pleadings or defenses, or the kind or sufficiency of pleas made in the court below. Motions to dismiss appeals are based on lack of jurisdiction of the appellate tribunal or failure to observe the law or rules relating to appeals or for causes arising subsequent to the judgment from which the appeal is taken. If, when the case arrives in this court, there is no actual controversy, the appeal will be dismissed on motion. It is not within the province of the appellate court, for example, to decide abstract or hypothetical questions distinct from the granting of actual relief or from the determination of which no practical result can follow. Nor will an appellate court consider a fictitious case submitted merely for the purpose of testing the right to do a particular thing. Therefore, if, pending an appeal, an event occurs which renders it impossible for the appellate court to grant any relief, the appeal will be dismissed no matter whether such condition arises from the act of the appellant or from the act of the appellee; and the result will be the same if the same condition arise from an act of the court a quo, as where, pending appeal, some order or judgment issued in the case renders the determination of the questions presented by the appeal unnecessary. Such a condition may arise also by act of the law or by mere lapse of time, as where, pending an appeal from an order of the court in a case involving an infringement of a patent, the acts of tenure of a public or election officer, or other matter, the patent expires, the official term comes to an end, the election is held, or an order of the court is executed. Similarly where a litigation has ceased to be between parties having an adverse interest, the appeal will be dismissed; and where all substantial interest in the controversy has been parted with or extinguished, the court will not hear the appeal simply to determine the right to costs."

Certainly none of the grounds just mentioned for the dismissal of an appeal are found in the case at bar. The Supreme Court itself gives absolutely no reason for a dismissal of the appeal. After discussing all of the questions raised by the appellant and deciding them adversely to him on the merits, the court abruptly says: "For all of the foregoing reasons it is hereby decreed and ordered that the appeal be dismissed \* \* \*."

"The foregoing reasons," appearing in the quotation refer to the reasons given in the discussion by the court, upon the merits of the questions presented by the appellant. They are simply reasons given by the court for deciding against the appellant the questions which he presented on the appeal. There are absolutely no reasons in the opinion of the court for a dismissal of the appeal. All of the reasons given go to the affirmance of the judgment of the Court of First Instance. Not one of them touches the dismissal of the appeal.

The appellant is, therefore, left entirely in the dark as to why his appeal was dismissed by this court. No reasons are given, I can conceive of none, and I assume that the appellant himself knows of none.

The nature of the act of the court in dismissing the appeal further appears when we come to consider in what position the appellant in this court finds himself should he desire to appeal to the Supreme Court of the United States, as he has a perfect right to do under the provisions of the Act of Congress of July 1, 1902, a constitutional

question being involved (sec. 10). The only act of the Supreme Court of the Philippine Islands from which he could appeal is the order dismissing<sup>1</sup> the appeal from the Court of First Instance entered in pursuance of its decision. There is no judgment of this court on the merits or on the constitutional question or on anything else, from which an appeal could be taken to the Supreme Court of the United States. The only act appealable is, as I have said, the order dismissing the appeal. That being the case, he must appeal from that or nothing. It is clear, however, that the only question he could raise in the Supreme Court of the United States on such an appeal would be that of whether this court erred in dismissing the appeal; and the only judgment of that court would be one of affirmance or reversal of that order. No judgment on the merits of the case or on the constitutional question is possible on an appeal from an order dismissing the appeal. A reversal necessarily following, as the order of the Supreme Court of the Philippine Islands is from no point of view sustainable, the only possible act of the Supreme Court of the United States under the facts and circumstances would be an order returning the case to the Supreme Court of the Philippine Islands for a judgment on the merits. This is necessarily so as the appellant has a right, under the Act of July 1, 1902, to have the judgment of the Supreme Court of the United States on the merits and especially on the constitutional question involved, and no such judgment can be given on an appeal from an order dismissing an appeal.

With this order of the Supreme Court of the United States the appellant returns to the Supreme Court of the Philippine Islands and, in pursuance thereof, is given a hearing and gets a judgment of this court on the merits, including the constitutional question, the very thing this court should have given him at the start. By its refusal to do so it has caused the appellant the trouble and expense of an extra appeal to the Supreme Court of the United States in order to put himself in a position to take advantage of the rights which the Act of Congress gave him, and which he should have had the opportunity to do without it. It is a serious error of this court and one which produces grave injustice. By reason of it an appellant may be forced to take an appeal from the Court of First Instance to the Supreme Court of the Philippine Islands, and an appeal to the Supreme Court of the United States, and, after a reversal by the latter of the order of the former dismissing the appeal from the Court of the First Instance, he still finds himself with nothing but the judgment of the Court of First Instance which touches the question which he has to present.

It is no reply to say that, even if the appeal was dismissed by the Supreme Court of the Philippine Islands, the appellant still has the judgment of the Court of First Instance. He had that before he appealed; and the whole purpose of an appeal is to get the judgment of the appellate court. An appeal is no appeal without that right; and when he is denied it by the appellate court, that court not only errs but its error is so fundamental as to disregard absolutely the very reason for the existence of an appeal.

For these reasons I dissent.

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