

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. REGINO BLANCO, DEFENDANT AND APPELLANT.

G.R. No. 12435. November 09, 1917

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant was convicted originally in the court of the justice of the peace of the municipality of Castillejos, Province of Zambales, and fined P25 on a charge of violation of an ordinance of that municipality prohibiting and penalizing the obstruction of the public highways. On appeal to the Court of First Instance of the Province of Zambales, the accused was again convicted and fined P25. The case is before us on appeal from the judgment entered in the Court of First Instance.

Having in mind the provisions of Act No. 2677 enacted since this appeal was perfected, expressly authorizing appeals in cases of this kind, we do not stop to consider the contentions of the parties as to the merely procedural question touching the proper disposition of this appeal under the law in force prior to the enactment of that statute.

On this appeal counsel relies wholly upon his contentions—

First. That a doubt arises as to whether the ordinance in question was in force at the date of its alleged violation. Section 9 of the ordinance reads as follows:

"Esta ordenanza entrará en vigor desde su aprobación por la honorable Junta Provincial. (This ordinance will take effect from the date of its approval by the honorable provincial board.)"

Counsel contends that since no affirmative proof was offered in the court below as to the date of approval of the ordinance, the court had no evidence before it on which to base a finding that the ordinance was in force at the date of its alleged violation.

We have no doubt, however, that a court of a justice of the peace may, and should, take judicial notice of the municipal ordinances in force in the municipality wherein it sits; and we are furthermore of opinion that in an appeal from a judgment of a court of the justice of the peace the appellate courts may take judicial notice of municipal ordinances in force in the municipality wherein the case originated, and to that end may adopt the findings and conclusions of the court of the justice of the peace in that regard as developed by the record, in the absence of affirmative proof that such findings and conclusions are erroneous. (*U. S. vs. Hernandez*, 31 Phil. Rep., 342; Cf. sec. 51, Manila Charter.)

The doctrine is well stated by Judge McQuillin in the following citation from his work on Municipal Corporations, and we are of opinion that under the judicial system in force in these Islands, the rule which should be adopted is that set forth in the last paragraph of the citation as the "better view" with regard to the matter dealt therein:

"Par. 849. Courts will judicially notice the charter or incorporating act of a municipal corporation without being

specially pleaded, not only when it is declared to be a public statute, but when it is public or general in its nature or purposes. But state courts will not take judicial notice of ordinances of municipal corporations; hence, as mentioned, they must be pleaded with as much certainty of description as to their subject-matter as a contract or other private paper.

"Courts of the state take judicial notice of public laws of the state. Ordinances when legally enacted operate throughout the limits of the city in like manner as public laws operate within the state limits. The city or municipal courts bear the same relation to ordinances of the city as the state courts do to the public laws of the state. Hence, on principle, the municipal courts may for like reason take judicial notice of all city ordinances of a general nature, or those having a general obligatory force throughout the city. And the rule that courts will not take judicial notice of municipal ordinances does not apply to police courts and city courts, which have jurisdiction of complaints for the enforcement of ordinances. They will take judicial notice of their ordinances, without allegation or proof of their existence.

"Par. 861. While, as we have seen, municipal or city courts will take judicial notice of the ordinances and resolutions passed and in force within the jurisdiction of the court, without being pleaded and proved, in many jurisdictions it is held, and the weight of authority seems to be that, on appeal from such courts to a state court the latter will not take judicial notice of ordinances unless they have been pleaded in the municipal or city court and set out in the record. But the better view appears to be that where an action for the violation of an ordinance has been commenced in a municipal or police court and the case is appealed, the latter court, whether state or municipal, will take judicial notice of the incorporation of the city and of the existence or substance of its ordinances."

It has been suggested that the doctrine thus stated should not be followed in this jurisdiction, because our statutes providing for appeals from municipal courts to Courts of First Instance, contemplate and prescribe trials de novo.

We think that the following citations of authority sufficiently dispose of this contention, having in mind the provisions of our statute which in both civil and criminal cases authorize the trial de novo of cases appealed to a Court of First Instance to proceed on the complaint submitted in the court of the justice of the peace or the municipal court wherein the case originated. (Art. 112, Code of Civ. Proc.)

"Municipal courts, and the circuit courts on trials de novo on appeal from them, will take judicial notice not only of the ordinances of a city, but of such journals and records of the common council as affect their validity, meaning, and construction, just as state courts take official notice of the public statutes of the State and the journals of the legislature." (Portland vs. Yick, 44 Ore., 439.)

"When the case was taken on appeal from the police court to the district court, it was not only within the power, but it was the duty of the district court to try the case in the same manner that it should be tried before the police court. The district court was in fact substituted for the time being for the police court, and whatever the police court could have taken judicial notice of while the case was in that court, the district court could and should have taken judicial notice of after the removal of the case to the district court." (Smith vs. City of Emporia, 27 Kan., 528, 530.)

"Where an action for the violation of a city ordinance is commenced and prosecuted to conviction and sentence before the police judge of such city, and the case is then taken by the defendant on appeal to the district court, the district court should, with reference to such case, take judicial notice of the incorporation of such city, and of the existence and substance of its ordinances." (City of Solomon vs. Hughes, 24 Kan., 154.)

As shedding some light upon the contentions raised by counsel in this connection, we insert here a citation from

Dillon on Municipal Corporations, which, read together with the citations in the notes appended by the author, indicates quite clearly the line of reasoning upon which the courts in the United States have proceeded in cases of this kind:

"Mode of pleading ordinances.—The courts, unless they are the courts of the municipality, do not judicially notice the ordinances of a municipal corporation, unless directed by charter or statute to do so. Therefore, such ordinances, when sought to be enforced by action, or when set up by the defendant as a protection, should be set out or stated in substance in the pleading. It has been sometimes decided that it is not sufficient that they be referred to generally by the title or section. It is, however, believed to be sufficient, in the absence of special legislative provision prescribing the manner of pleading, to set forth the legal substance of that part of the ordinance alleged to have been violated, it being advisable, for purposes of identification, to refer also to the title, date and section. The liberal rules of pleading and practice which characterize modern judicial proceedings should extend to, and doubtless would be held to embrace, suits and prosecutions to enforce the by-laws or ordinances of municipal corporations." (Dillon on Corporations, sec. 413 (346).)

Second. It is contended further, that the ordinance having been enacted under authority of the provisions of article 39, subsection (j) of Act No. 82 (The Municipal Code), and that Code having been repealed by the enactment of the Administrative Code, the ordinance should be deemed to have been abrogated at the same time. It is sufficient answer to this contention to indicate that the Administrative Code, while it repealed the Municipal Code, conferred upon and confirmed to all duly organized municipalities the power to enact and maintain ordinances such as that now under consideration, in substantially the same language as that found in the Municipal Code. (Cf. Administrative Code, sec. 2242, subsecs. (e) and (h).)

Section 3 of the Administrative Code expressly provides that the provisions of that Code incorporating prior laws shall be deemed to be made in continuation thereof, and to be in the nature of amendments thereto, without prejudice to any right already accrued.

It follows that the enactment of the Administrative Code did not have the effect of abrogating or repealing a municipal ordinance enacted and maintained in the exercise of a power confirmed to the municipality by the code itself.

We find no error in the proceedings prejudicial to the rights of the accused; and conclude that the judgment entered in the court below should be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Araullo, and Street, JJ., concur.

Torres, Johnson, and Avancena, JJ., did not sit in the case.

MALCOLM, J., concurring:

I concur. I am glad to note that this decision has the effect of nullifying the obiter dicta to be found in the United States vs. Ong Yec So ([1915] 31 Phil., 202) to the effect that "from the express terms of the statute it is clear that the penalty prescribed in case of recidivism can be imposed only in those cases wherein there has been a previous conviction under this statute, and that a former conviction under the old law is not sufficient for that purpose."

Just as the Administrative Code is a "continuation" of the Municipal Code, so is the present Opium Law a "continuation" of the anterior Opium Law.

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