

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FILOMENO ESTAPIA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 12891. October 19, 1917

Ponente: CARSON, J.

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CARSON, J.:

The defendants took part, either as principals or as spectators, in an ihaway, the local name for a kind of cockfight in which it is agreed that the losing cock is to be divided between the owners of the two birds engaged in the fight. The owners, with a few of their friends, were seen carrying the gamecocks to a grove of buri palms near a recently constructed house; and were surprised by the police, soon afterwards, standing, with some 8 or 10 onlookers, in a ring around the spot beneath a buri palm where the fight had just taken place. There is nothing in the record which even tends to indicate that the grove of buri palms where the fight took place had ever been used for such a purpose on any other occasion; or that on that occasion more than one fight took place; or that any wager or bet was made on the fight, other than the agreement that the losing bird should be killed and eaten by the owners of both cocks.

Upon proof of these facts judgment was entered in the court below convicting the defendants of a violation of the provisions of section 1 of Act No. 480, and sentencing each of them to pay a fine of P25 and the costs of the trial.

We agree with counsel for the appellants that the foregoing statement of the material facts developed at the trial does not sustain this judgment of conviction.

The pertinent sections of Act No. 480 enacted October 15, 1902, read as follows:

"Section 1. Any person who shall maintain a cockpit for the fighting of cocks, or who shall engage in cockfighting in a cockpit, or who shall attend as a spectator of cockfighting in a cockpit, on any day when cockfighting is not lawfully licensed to take place by the municipality in which the cockpit is situate, shall be punished by a fine not exceeding two hundred dollars, in money of the United States, 'or by imprisonment not exceeding six months, or both, in the discretion of the court.

"Sec. 2. Any person who shall maintain or take part in a game of chance in a cockpit, whether the cockpit be lawfully licensed or not, shall be punished by a fine not exceeding two hundred dollars, in money of the United States, or by imprisonment for not exceeding six months, or both, in the discretion of the court."

This statute does not penalize all unlicensed cockfighting, but merely unlicensed cockfighting in a cockpit. The statute does not impose penalties on those "who shall engage in cockfighting," but on those who "shall engage in cockfighting in a cockpit." It does not direct that the prescribed penalty shall be imposed on one "who shall attend as a spectator of cockfighting," but on any person who "shall attend as a spectator of cockfighting in a cockpit." Manifestly, then, the penalties prescribed in this statute cannot be imposed unless it affirmatively appears not only that the accused engaged in, or were spectators of cockfighting, but also that this cockfighting took place in a cockpit.

We agree with counsel for the appellants that while it appears that the accused were participants in, or spectators & an unlicensed cockfight, nevertheless, the evidence of record fails utterly to sustain a finding that this cockfight took place in a cockpit.

The Attorney-General suggests that the term cockpit as used in the statute should be construed to mean any place at which a cockfight takes place. His argument would seem to be that since, as he contends, every place at which a cockfight occurs is a cockpit, proof that one engaged in, or was present at, a cockfight is proof that he was engaged in or was present at a cockfight in a cockpit.

But this contention runs counter to the plain language of the statute and cannot be supported by any sound rule of statutory construction.

(1) It violates the elementary rule that, when possible, all the words of a statute are to be given some meaning so that when the legislator makes use of words of limitation, he must be presumed to have intended to limit and restrict, in some way, the word or idea with reference to which such words of limitation are applied.

If cockfighting means exactly the same thing as cockfighting in a cockpit, why did the legislator carefully insert the words in a cockpit after the word cockfighting on both occasions when he made use of that term in the first section of the statute?

(2) The penal provisions of a statute are to be construed strictly—a rule of construction which emphatically forbids any attempt to hold that when the legislator penalizes the commission of an act on certain specific occasions, he intends to penalize it on all occasions. A holding that the provisions of section 1 of this Act penalize unlicensed cockfighting on all occasions and wherever it may take place, despite the fact that these particular penalties are especially limited to unlicensed cockfighting in a cockpit, would run counter to both the spirit and the letter of this rule.

(3) In construing particular words or terms used in a statute, due regard should be had for the context. The provisions of the statute with relation to the maintenance of unlicensed cockpits, and the taking part in games of chance in cockpits, licensed or not, quite clearly indicate that when the legislator made use of the word cockpit, he had in mind some place especially designed for use by cockfighters, or used by cockfighters more or less frequently as the scene of their encounters; and not merely a place at which upon a single occasion, and without special preparation, a single encounter takes place between two birds.

(4) The English word cockpit connotes something more than a place on the side of a road, in an open field, beneath a tree, or in a barn, where a single encounter takes place between two birds. Originally it referred, of course, to the specially prepared pits in which cocking-mains were fought. And main is defined by Webster to be; "A match of several battles at cockfighting." In popular usage the word has come to mean any place especially designed for use by cockfighters, or at which cockfighting battles are had. But it would be a strained and unusual extension of the meaning of the word, as used in the statute, to say that any and every place at which a single encounter is had between a couple of birds is a cockpit. We are satisfied that if such a strained and unusual use of the word is permissible under any circumstances, it was not in this sense that it was used by the legislator because, as we have seen, it would be a vain and meaningless thing to make use of the term in this sense, as a word of limitation upon the word cockfighting.

Webster, Funk & Wagnalls, and the Twentieth Century Dictionary define a cockpit to be, "A pit or ring for cockfighting." This definition clearly connotes some idea of a place set apart for cockfighting or for the use of cockfighters, either by special adaptability or preparation therefor, or by more or less frequent use. The meaning of the definition would not be wholly lost by substituting in the place of the preposition "for," some such words as

"adapted to," "appropriate to," "designed for," "intended for," or "used for." But the use of the simple preposition "for" imports some suggestion of the dedication or devotion of the place to the use indicated either by some specific form of preparation, or by its repeated use to that end. It does not appear that the legislator had in mind any particular form or degree of preparation, or any definite number of cockfights which would be necessary to characterize a given place as a cockpit; but we are satisfied that he contemplated that some preparation for use for cockfighting, or that the celebration of more than one battle would be necessary to justify the courts in characterizing a particular spot as a cockpit in the sense in which the word is used in this statute. It may be that a grove of trees, a barn or shed, and even an open field or crossroads to which a number of birds are brought to fight a main, or to which cockfighters more or less frequently resort to engage in the sport, might fairly be included in the definition of the term as used in the statute—but not a place to which, without any preparation, the owners of a couple of birds betake themselves on a single occasion for a single encounter.

(5) The word *gallera* as used in the official Spanish version of the statute (to which we are expressly authorized to look for aid in construing the English version in case of doubt) has a still more restricted meaning than that which, as we have indicated, may be given to the English word cockpit for which it is used as an imperfect equivalent. The Spanish word *gallera* clearly conveys the idea of a place especially and expressly designed for the conduct of cockfighting; and no proper use of the word lends itself to the meaning which the Attorney-General would place on the statute. Of course, the broader definition of the word cockpit as found in the authoritative English version must prevail, but if any doubt can be said to exist as to the sense in which that word is used in the statute, the use of the word *gallera* as its equivalent in the Spanish version suggests that such doubt must be resolved against the contention of the Attorney-General in the case at bar.

It is urged that the meaning given to the language of the statute by the trial judge is that which has been given to it by the Collector of Internal Revenue and the Attorney-General since the date of its enactment, and that the court should not disturb the uniform construction given a statute of this kind by these executive authorities. It is to be observed, however, that this statute is not in any proper sense a revenue measure, so that the rule, by virtue of which the courts pay marked respect to the uniform and long continued construction placed upon the language of a revenue statute by the revenue officers of the government, has no special application in this case. We think that in view of the penal character of the statute, the courts are not, and should not be bound, when the statute first comes before them for interpretation, by any construction placed upon it by the executive officers of the government, even if the language were fairly susceptible of the meaning placed upon it by those officers. But holding, as we do, that the alleged construction placed upon the statute by the executive officers of the government is manifestly in conflict with the plain meaning of the terms used and the evident intention of the legislator in the use of these terms, we are of opinion that the construction thus placed upon the statute should be, and must be wholly disregarded. The rule relied upon by the prosecution is, at best, a mere aid to construction or interpretation in cases where the language of a statute is fairly susceptible of more than one meaning, so that substantial doubt arises as to the intent of the legislator in the use of such ambiguous language.

It is urged, in support of the view taken by the executive authorities, that by applying this penal provision to unlicensed cockfighting wherever it occurs, they have displayed commendable activity in the repression of a reprehensible practice condemned by the enlightened opinion of the day. To this it should be sufficient answer to say that neither the executive nor the judicial authorities are authorized to impose fines and prison sentences in cases wherein such fines and prison sentences are not clearly authorized by law, and this without regard to the end sought to be attained by the enforcement of such unauthorized penalties.

It is a matter of general knowledge in the Philippine Islands that, ever since the change from Spanish to American sovereignty, more or less active agitation has been maintained for the purpose of securing legislation absolutely

prohibiting and penalizing cockfighting in all its forms. The discussion of the subject by the legislative and executive authorities of the government throughout that period clearly discloses a desire on the part of these authorities to restrict and limit the practice, coupled, however, with a full recognition of a grave question of public policy as to the measures which should be adopted to that end, and the extent to which the prohibitions should be carried. Thus we find the Governor-General of the Philippine Islands asserting in 1910 that "the government's policy as regards cockfighting has been directed towards the gradual restriction thereof:" and an examination of the statute book leaves no room for doubt that the steadfast policy of the legislator has been to restrict and limit licensed or authorized cockfighting in cockpits to a limited number of holidays and feast days, by the enactment of general legislation to that end; and to entrust all questions as to enforcement of further restrictions or limitations upon the practice of cockfighting, to the local or municipal authorities throughout the Islands.

The law now in force on this subject, other than that found in Act No. 480, is set forth in the recently enacted Administrative Code. Sections 2285 and 2389 restrict all cockfighting to authorized cockpits upon prescribed legal holidays, but make no express provision for the imposition of penalties for violations of their provisions. But it will be found that the legislator has not left these legislative prohibitions wholly without sanction. Act No. 480 provides the appropriate penalties for violations of the general law restricting cockfighting in cockpits to the legal holidays authorized by statute; and subsection (i) of section 2243 of the Administrative Code confers authority upon the various municipal councils throughout the Islands to adopt ordinances regulating or prohibiting altogether cockpits, cockfighting and the keeping and training of fighting cocks within their respective jurisdictions, and to provide such penalties for violations of these ordinances as they may deem proper.

It has been said that the alleged evils incident to a popular practice of this kind can be more effectively dealt with by entrusting legislation on the subject to the awakening of an enlightened public opinion, as it finds expression in the enactment of local ordinances and municipal regulations; rather than by the enactment of general penal legislation, which takes no account of local sentiment or of differences in the degree of culture and intelligence in the various communities scattered throughout the Islands. This view would seem to have inspired the legislation heretofore enacted on this subject, and who shall say that the lawmaker has acted wisely or unwisely in the adoption of the public policy with regard to cockfighting which is disclosed by the laws on our statute books? Certainly not the courts, whose sworn duty it is to enforce the penal statutes as they are found upon the statute book, and not otherwise.

We conclude that the judgment appealed from should be reversed, and the accused acquitted of the offense of which they were convicted in the court below, with the costs in both instances de officio. So ordered.

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

DISSENTING

MALCOLM, J.,

This appeal makes necessary a construction of Act No. 480, from its title a law punishing the "unlawful maintenance of cockfighting and cockpits." The law reads:

"Section 1. Any person who shall maintain a cockpit for the fighting of cocks, or who shall engage in cockfighting in a cockpit, or who shall attend as a spectator of cockfighting in a cockpit, on any day when cockfighting is not lawfully licensed to take place by the municipality in which the cockpit is situate, shall be punished by a fine not exceeding two hundred dollars, in money of the United States, or by imprisonment not

exceeding six months, or both, in the discretion of the court.

"Sec. 2. Any person who shall maintain or take part in a game of chance in a cockpit, whether the cockpit be lawfully licensed or not, shall be punished by a fine not exceeding two hundred dollars, in money of the United States, or by imprisonment for not exceeding six months, or both, in the discretion of the court."

The defendants were caught fighting cocks in a grove of palms on a day not permitted by law and without license. No bets as such were made; but the cockfighting was what is called *ihaway*, which may be freely translated as a division of the losing bird among the spectators. Predicated on these facts, counsel for appellants claim that there exist two fatal errors in the prosecution, one that betting did not take place, and the other that the cockfighting was not done in a building.

As to the first, it is sufficient to point out that under section 1 of Act No. 480, what is prohibited is the maintenance of a cockpit for the fighting of cocks on any day when cockfighting is not lawfully licensed to take place. The purpose of this section is absolutely to prohibit cockfighting, except on certain specific days. Betting is not an essential element of the offense. (See *U. S. vs. Rafael* [1912], 23 Phil., 184.)

The second contention involves a construction of the word "cockpit." "Cockpit" is defined by Webster's Dictionary as "a pit or area where gamecocks fight." The Attorney-General in numerous opinions has held that it is not necessary for the fighting of cocks to be conducted inside of a building or inclosure to bring the participants within the provisions of Act No. 480. The former Secretary of Finance and Justice has held that "the conducting of a fight under a mango tree or at any other place is a management of a cockpit within the meaning of the Internal Revenue Law. It is carrying on cockfighting 'in an area where gamecocks fight.'" The term, therefore, does not necessarily carry with it the idea of a building or place maintained for the fighting of cocks.

The law contains other plain indicia pointing to the same conclusion. In Act No. 480 is found the phrase "cockfighting in a cockpit." What does this signify? "Cockpit" we have already defined as "a pit or area where gamecocks fight." The lexicographers also define "cockfighting" as "a battle between cocks; specifically, a match between two gamecocks; in which the birds armed with artificial spurs of steel are pitted against each other in a ring." Keeping, therefore, to the ordinary meaning of the law and not indulging in any unwarranted inferences, a combination of the definitions is "a match between two gamecocks in a pit or area." And this is the identical aspect of our present facts. To give such a construction to the law, as is claimed by counsel for appellants, would be to deprive it to a large extent of its force and effect. On the other hand, the interpretation above indicated keeps to the ordinary and settled meaning of the words, while giving force to all the words of the statute.

What has been said is greatly reinforced when we note that the purpose of the Government has been, and is, to restrict rather than to encourage cockfighting. The Governor-General, in an opinion in 1910, said that, "the Government's policy as regards cockfighting has been directed towards the gradual restriction thereof." The Administrative Code, which only recently went into effect and which should be construed in connection with Act No. 480 in order to ascertain and to give effect to the legislative intention, provides that "cockfighting shall take place only in licensed cockpits." (Sees. 2285, 2389.) The attitude of the Government in this respect must meet with the approval of all good citizens. Cockfighting is detrimental to public morality. Its influence is pernicious. It encourages cruelty to animals. It disturbs the balance of society. It tends to bring forth idlers and gamblers. Restriction and ultimate prohibition should receive judicial sanction.

I have thus far considered the question at issue by means of independent research unrelated to and uninfluenced by the majority decision. A few words only as to this decision. Its effect is this: To reverse the carefully considered judgment of the trial court, to overturn the practice and policy of the Executive Department of years

duration, to brush aside the meaning of the law as disclosed by the lexicographers and thus to nullify legislative intention, to put the seal of judicial approval on the pernicious vice of cockfighting, and to give no consideration to what is for some the sole reason for law and is for all progressive thinkers an aspect never to be neglected, the sociological foundation of jurisprudence. The majority decision discovers some peculiar sanctity in nature's canopy as opposed to a covering of nipa suitably "prepared." It purifies "the single encounter * * * between two birds" and reserves its wrath for "cockfighting battles" had "frequently." Under the majority decision, all that the violator of the law has to do to escape punishment is either to be sure that on no two successive occasions does he follow his sport in exactly the same spot, or that the place selected has undergone no preparation, or that he has only two chickens together at the same time.

As diametrically opposed to this standpoint, there is for me in all cases a principle of statutory construction not to be found in the books, but which for the Philippine Islands is all-important. In the resolution of all questions, I begin with these queries: What is for the best interest of the Filipino people? How under the law can the progress of the Philippine Islands be advanced? From this viewpoint, which as a matter of fact is herein in accord with the logical interpretation of the law, there is but one possible result—to assist the Legislature in its enactment of the law and the Executive in his enforcement of the, law by a judicial interpretation which will make legislative intention and executive action effective.

The judgment of the trial court sentencing each of the defendants to pay a fine of P25, or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs, should be affirmed.

Judgment reversed; defendants acquitted.

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