

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. QUE BING ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 1382. October 26, 1906

Ponente: WILLARD, J.

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WILLARD, J.:

The defendants in this case were convicted in the municipal court of the city of Manila of a violation of section 3 of Ordinance No. 2 of the city of Manila, prohibiting gambling. From the judgment of conviction they appealed to the Court of First Instance for the city of Manila. In that court they presented a demurrer to the complaint. The decision sustaining the demurrer is as follows:

"En el artículo 5 de la Ordenanza No. 2 se usan las palabras *faro y ruleta* que no se usan en los otros párrafos de la ordenanza y de esta circunstancia se deduce que la Junta Municipal no ha querido hacer aplicable a los jugadores un principio tan general como en lo referente a las personas mencionadas en, los cuatro párrafos anteriores.

"Opino que el juego que se prohíbe en el artículo 5 debe de ser de la misma índole de la ruleta o faro y no constando de la querella que el panguingue de Chino lo es, se estima el demurrer."

From this order the Government appealed to this court.

The right of the Government to appeal from an order sustaining a demurrer to the complaint has been sustained by this court in the case of the United States vs. Ballentine[(1)] (4 Off. Gaz., 722), August 17, 1903.

This right is based on section 44 of General Orders, No. 58, which is as follows:

"Either party may appeal from a final judgment or from an order made after judgment affecting the substantial rights of the appellant or in any case now permitted by law. The United States may also appeal from a judgment for the defendant rendered on a demurrer to an information or complaint, and from an order dismissing a complaint or information."

In cases commenced in the Court of First Instance, as was the case of the United States vs. Ballentine, this section secures that right, but as to cases commenced in the court of the justice of the peace or in the municipal court of the city of Manila the section is limited and restricted by the provisions of section 43 of the same general orders, which is as follows:

"From all final judgments of the Courts of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Supreme Court as hereinafter prescribed. Appeals shall also lie from the final judgments of justices of the peace in criminal cases to the courts of the next superior grade, and the decisions of the latter thereon shall be final and conclusive except in cases involving the validity or constitutionality of a statute, wherein appeal may be made to the Supreme Court."

In this case no question is raised as to the validity or constitutionality of the ordinance in question. No such

question being raised, this court has no jurisdiction over the appeal. (See *Trinidad vs. Sweeney*,^[1] No. 2487, 3 Off. Gaz., 603, and *Legaspi vs. Sweeney*,^[2] 4 Off. Gaz., 522.)

The appeal is dismissed with the costs de oficio.

After the expiration of ten days from the date of final judgment let the case be remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

[(1)] 4 Phil. Rep., 672.

[1] 4 Phil. Rep., 531.

[2] 5 Phil. Rep., 157.

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