THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. M. J. LIMSIONGCO, VICENTE YAP, YAP BUN, TAN FONG, SING JOY, CHINO SAYA (ALIAS) ISAIAS JAVIER, LIM LIONGCO, SING YANG, LORENZO PAVI...

G. R. No. 16217. October 09, 1920

Ponente: MALCOLM, J.

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MALCOLM, J.:

Recently the second division of this court rendered a decision in a gambling case which will be found in the note below.[1] Within the time allowed by the Rules of the Court, counsel for appellants have raised a most interesting question unconnected with the merits of the particular case, but assailing the very structure of the court itself. Appellant's motion is based "on the ground that the instant decision was rendered by a division of the court and not by the body constituted by law for the purpose, and hence the decision as rendered, was rendered by a body outside the law and having no power, authority or jurisdiction to render a final decision in the controversy." In answer, the Attorney-General submits "that section 138 of the Administrative Code permitting and authorizing the Supreme Court to sit in division only touches and affects the matter of practice and method of procedure of said court, which the acts of Congress * * * clearly authorized the Legislature to do."

Considering the importance of the issue thus raised, the second division has thought it advisable to refer the motion to the court in banc for consideration, and the court, as thus constituted, has authorized the filing of the decision which follows:

The portion of the law which authorizes divisions in the Supreme Court is found in section 138 of the Administrative Code of 1917, reading as follows:

> "SEC. 138. Sessions of court in banc and in divisions.- The Supreme Court shall, as a body, sit in bane, but it may sit in divisions to transact business for which four judges constitute a quorum, and two divisions may sit at the same time. If the Chief Justice is present, whether in banc or in division, he shall preside. In his absence, that one of the judges attending in banc or in the division shall pre side who holds the senior commission.
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> "Six of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum for the transaction of any business involving the admiralty jurisdiction of the court, or for the final disposition of a civil case in which the amount in controversy exceeds ten thousand pesos or a criminal case in which the judgment of the lower court imposed death, or imprisonment for more than ten years, or a fine of more than ten thousand pesos, and the concurrence of five judges shall be necessary for the pronouncement of a judgment, but when there is a vacancy in said court five judges shall constitute such quorum, and the concurrence of four shall suffice for the pronouncement of the judgment. In all other cases the presence of four judges shall be sufficient to form a quorum, and the concurrence of three judges for the pronouncement of a judgment.
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> "In the absence of a quorum the court shall stand ipso facto adjourned until such time as the requisite number shall be present, and a memorandum showing this fact shall be inserted by the clerk in the minutes of the

court."

As fundamental in nature and as partially decisive of the question before us, the measure of the powers granted by the Congress of the United States to the Government of the Philippine Islands is not in doubt. The Philippine Legislature is given general legislative power subject to specific limitations. The rule is, that an Act of the Philippine Legislature, which has not been expressly disapproved by Congress, is valid unless the subject-matter has been covered by Congressional legislation or its enactment forbidden by some provision of the Organic Law. (Act of Congress of August 29, 1916, sees. 7, 8, 12; U. S. vs. Bull [1910], 15 Phil., 7; In re Guarina [1913], 24 Phil., 37; Chanco vs. Imperial [1916], 34 Phil., 329). Somewhat akin to what American courts do in passing upon the constitutionality of an Act of a State legislature must be done by the Philippine courts when any one of them has to decide as to the validity of an Act of the Philippine Legislature, namely, it must always be determined, not whether the power is given, but whether in express terms or by necessary implication it is forbidden, and whether the field has been entered by the Congress of the United States.

Keeping these familiar but unvarying rules to the front, our question resolves itself into one of whether or not section 138 of the Administrative Code infringes any of these constitutional propositions. All will concede that the Congress of the United States has taken no action to suspend or disapprove this section of the Administrative Code. Does any portion of Philippine Organic Law cover the subject-matter of section 138 when it provides for divisions of the Supreme Court, or forbid the enactment of such a law?

The Cooper Law, the Act of Congress of February 6, 1905, grants original and exclusive jurisdiction to the Supreme Court in all actions brought by the Philippine Government involving the construction of section 4 of the Law, and provides how vacancies on the court shall be temporarily filled. The Congressional Joint Resolution of April 9, 1910, authorizes the Supreme Court to hold terms of court at Baguio. The existing Organic Act for the Philippine Islands, the Act of Congress of August 29, 1916, provides that the Chief Justice and Associate Justices of the Supreme Court shall be appointed by the President by and with the advice and consent of the Senate of the United States (sec. 26); that the annual salaries of the Chief Justice and Associate Justices shall be the sums named in the Act (sec. 29); that the admiralty jurisdiction of the Supreme Court shall not be changed except by Act of Congress (sec. 26); and 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 law" (sec. 26). Counsel particularly address their arguments to the portion of section 26 of the Organic Act last quoted, having to do with the jurisdiction of the Supreme Court.

Before taking up the precise point ably argued by counsel, a little delving into judicial history will serve to clarify the situation. The Supreme Court of the Philippine Islands, which had previously existed under the Spanish administration as the Audiencia Territorial de Manila, was reestablished by General Orders No. 20 of the Military Government, dated May 29, 1899. An Act providing for the organization of courts in he Philippine Islands including the Supreme Court (No. 136) was enacted by the Philippine Commission in 1901. All previous provisions, with some modifications and additions, were collated in the Judiciary Law found in the Administrative Codes of 1916 and 1917. Local statutory law, among other things, now provides for a Supreme Court of nine judges, fixes the qualifications for office of such judges, names the vacation period, determines when regular terms of court shall be held, and grants to the court exclusive administrative "control of all matters affecting its internal operations. (See Administrative Code of 1917, Tit. IV, h. 9, art. 2.) The Legislature finally provides for sessions of the court in banc and in divisions as hereinbefore noticed.

One cannot but notice that under the general legislative power assumed by the Military Governor, the Philippine Commission, and the Philippine Legislature, the Philippine judiciary has been created, organized, and reorganized with little or no Congressional intervention. The Legislature has turned to an organization for the Supreme Court

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not unknown in Philippine history since both the Audiencia and the first Supreme Court organized after American occupation in the Philippines were constituted with two branches, one civil and one criminal.

Recurring now to the point at issue let us first recall that the portion of section 26 of the Organic Act relating to the exercise of jurisdiction by the Supreme Court, an exact transcription of a portion of section 9 of the Philippine Bill, has invariably been construed by the courts to mean that the Philippine Legislature can add to, but cannot diminish, the jurisdiction of the Supreme Court and the Courts of First Instance. (Weigall vs. Shuster [1908], 11 Phil., 340; Barrameda vs. Moir [1913], 25 Phil., 44; In re Guariña [1913], 24 Phil., 37.) Jurisdiction has, in this connection, been defined as the authority to hear and determine a cause. (Herrera vs. Barreto and Joaquin [1913], 25 Phil., 245.) Our precise inquiry then becomes one of determining if the Philippine Legislature, by enacting hat portion of section 138 of the Administrative Code which authorizes divisions in the Supreme Court, has diminished the authority of the Supreme Court to hear and determine causes.

We think not. There is but one Supreme Court of the Philippine Islands. It is the jurisdiction of this Supreme Court which cannot be diminished. The Supreme Court remains a unit notwithstanding it works in divisions. Although it may have two divisions, it is but a single court. Actions considered in any one of these divisions and decisions rendered therein are, in effect, by the same Tribunal. The two divisions of this court are not to be considered as two separate and distinct courts but as divisions of one and the same court. In the exact words of the law which is questioned, "the Supreme Court shall, as a body, sit in banc, but it may sit in divisions * * *." (See generally 15 C. J., 869, citing authorities.)

The Legislature has merely attempted to regulate the organization of the court in a way not prohibited by any constitutional provision. The constitution of divisions has been permitted for convenience and the prompt dispatch of business. The provision in no way involves the question of jurisdiction.

We are not without some Philippine authority serving to clarify the distinction which should be drawn between an attempt of the Legislature to diminish the jurisdiction of the Supreme Court, which must always be resisted, and an attempt of the same Legislature to pass laws relating to the judicial organization, practice, and procedure, which must ordinarily be confirmed. For instance, in the case of the United States vs. Canent ([1914], 28 Phil., 317), the appellant contended that section 4 of Act No. 2041, as amended, providing for the assignment by the respective judge of the district to the justice of the peace in provincial capitals, of certain specified cases originally cognizable by said Court of First Instance, was unconstitutional in that it diminished the jurisdiction of Courts of First Instance, in violation of the Organic Act. This court, however, held that "the provisions mentioned do not diminish or curtail the jurisdiction of the Court of First Instance by the fact of authorizing him to assign the trial of such cases to the justice of the peace of the capital of the province in order that this latter officer, sharing the former's powers, may act in his stead, especially in the cases limitedly specified by law, and relieve the Court of First Instance from the duty of attending to them so that its attention may not be diverted from the more serious and important cases that come before it." The court further held that in passing the law in question, "the legislature of this country has merely made use of the power and authority conferred upon it by the said section 9 of the Act of Congress called the Philippine Bill." Again, when the Philippine Legislature passed Act No. 2347 reorganizing the Courts of First Instance, this was held to be a proper exercise of legislative authority because the law neither increased nor diminished jurisdiction. (Conchada vs. Director of Prisons [1915], 31 Phil, 94.) Again, when in quo warranto proceedings the Supreme Court was called upon to consider section 7 of the same Judicial Reorganization Act, fixing the qualifications of judges of first instance and especially providing that every judge of the Courts of First Instance shall cease to be such on the completion of the sixty-fifth year of his age, the court held that this section was valid and did not contravene the act of a superior power. The contention that any Act of the Philippine Legislature repugnant to Act No. 136 was as null and void as though in conflict with the Philippine

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Bill, was refuted. The court found that Congress had not legislated on the question of qualifications of judges of the Courts of First Instance of the Philippine Islands to such an extent as to exclude the Philippine Legislature from that field. (Chanco vs. Imperial [1916], 34 Phil., 329.) Just as certainly, in our view of the question, does it seem that Congress has left untouched the constitution of the Supreme Court of the Philippine Islands, leaving such organization within the purview of the powers of the local legislature.

We hold that the Philippine Legislature had power to enact a law authorizing the Supreme Court to sit either in banc or in divisions to transact business.

Motion denied.

Mapa, C. J., Araullo, Avanceña and Villamor, JJ., concur.

Johnson, J., concurs, reserving the right to prepare a separate opinion later.

[August 9, 1920]

[1] During the night of September 21, 1919, the game of monte was played in the house of M. J. Limsiongco, situated in the municipality of Tibiao, Province of Antique. One Lorenzo Pavia was the banker of the game and other persons, including Vicente Yap, Yap Bun, Tan Fong, Sing Joy, Chino Saya (alias) Isaias Javier, Lim Liongco, Sing Yan, and Mariano Tan-Congco, were the players. The game was observed by a secret service agent, and upon a report to a sergeant of the Constabulary, with the aid of the municipal police it was raided and the persons above mentioned were arrested and the paraphernalia and a small amount of money, confiscated.

The ten defendants were charged in an information filed in the Court of First Instance of Antique with a violation of the Gambling Law. In a carefully prepared decision handed down by the Hon. Fernando Salas, judge of first instance, each of them was found guilty and taking into consideration that none of them was a recidivist, M. J. Limsiongco, as owner of a gambling house, was sentenced to one month and fifteen days of imprisonment, Lorenzo Pavia as banker to one month and ten days imprisonment, and each of the other accused to one month's imprisonment, with a one-tenth part of the costs against each of the defendants.

The appellate court has received the benefit of an analysis of the evidence offered by each of the witnesses both for the prosecution and the defense by the trial court, by counsel for the appellants, and by the Attorney-General. The conclusion is irresistible that the facts briefly stated are as set forth in the beginning of this decision. We only dissent from the trial court with reference to the penalty imposed. As recently repeatedly held by this court, prison sentences must be meted out to those found guilty of a violation of the gambling law or ordinances, if this pernicious social cancer is to be eradicated; the penalty must be made more severe for those persons who propagate the evil. (See U. S. vs. Salaveria [1918], 39 Phil., 102; U. S. vs. Galvez, R. G. No. 15101, decided November 19,1919, not published; U. S. vs. Valerio, R. G. No. 16272, decided November 19, 1919, not published.)

In accordance with the foregoing, judgment is reversed, and the defendant and appellant, M. J. Limsiongco, shall be sentenced to six months imprisonment, to pay a fine of P200, or to suffer subsidiary imprisonment in case of insolvency, and to pay a one-tenth part of the costs of both instances; the defendant and appellant Lorenzo Pavia to six months imprisonment, to pay a fine of P200, or to suffer subsidiary imprisonment in case of insolvency, and to pay a one-tenth part of the costs of both instances; and each of the remaining eight defendants and appellants, namely, Vicente Yap, Yap Bun, Tan Fong, Sing Joy, Chino Saya (alias) Isaias Javier, Lim Liongco, Sing Yan, and Mariano Tan-Congco, shall be sentenced to two months imprisonment, to pay a fine of P100, or to suffer subsidiary imprisonment in case of insolvency, and to pay a one-tenth part of the costs of both instances. The

money and cards taken by the constabulary in the course of the raid shall be confiscated as provided by law.

So ordered.

(Sgd.) GEO. A. MALCOLM.

Conformes:

(Sgd.) E. FINLBY JOHNSON.

MANUEL ARAULLO.

RAMON AVANCEñA.

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