

DOMINADOR GOMEZ, PETITIONER, VS. PEDRO CONCEPCION, JUDGE OF FIRST INSTANCE OF MANILA, RICARDO SUMMERS, SHERIFF OF MANILA, AND GUILLERMO B. GUEVARA, CITY FISCAL, RESPONDENTS.

G.R. No. 23921. March 30, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of prohibition filed by Dr. Dominador Gomez, a practicing physician in the City of Manila. The case is rather unique and is, as far as we have been able to ascertain, without a precedent in the annals of jurisprudence. It appears from the record that some time in the year 1924, the following information was filed in criminal case No. 27550 of the Court of First Instance of Manila:

"The undersigned accuses Dominador Gomez, Olimpio Sison and Flaviano Torres of a violation of section 2 of Act 2381 of the Philippine Legislature, committed as follows:

"That on or about and including the period between the first of February and the 26th of April, 1924, in house No. 600 on Calle T. Pinpin of the City of Manila, Philippine Islands, and within the jurisdiction of this court, the accused, Dominador Gomez, conspiring and confederating with his coaccused Olimpio Sison and Flaviano Torres and with the assistance of the latter, maintained, controlled and offered to the public a place for injecting morphine, cocaine and other prohibited drugs, and the three defendants did then and there and in furtherance of the aforesaid conspiracy wilfully, unlawfully and criminally inject morphine, cocaine and other prohibited drugs in the bodies of Go Ti, Go Tico and So Chian and several other persons.

"Contrary to law."

After due trial, the court below rendered a lengthy decision in which, after stating the facts and showing that the accused treated several hundred patients a day with morphine or opium injections, his honor, the trial judge, says:

"It is therefore indubitable that the accused, for the purposes of the law, has not used the prohibited drugs as a medicine to cure, which is the only manner of using them which is authorized by law, because the treatment by slow suppression followed by him in attempting to cure his patients of the opium habit is, as he could have known, ineffective and produces opposite results. And as it cannot be alleged that he has used said drug as medicine he has violated the Internal Revenue Law and the Opium Law, and by reason of such illegal use, whether he has done it willingly or unwillingly, he has converted his office into a real den or resort where prohibited drugs and opium are used in violation of the law. (Sec. 2, Act No. 2381.)

"But if all this is indubitable, the same cannot be said when with a serene and impartial criterion the guilt of the accused is examined. For more than one reason the court entertains a reasonable doubt as to his guilt. There may have existed in the case before the court an error of fact on the part of the accused in believing that with his professional ability he could follow and practice a treatment knowingly ineffective; but there is doubt as to whether it can be attributed to bad faith. According to the evidence, the accused has always acted openly and confidently, and without attempting to conceal anything since he opened his office to the public. He

communicated this fact to the police department of this city, not only when he moved his office to another street and reopened it within a few days after it had been closed. Not only this, but upon being informed that some members of the police watched his office, he voluntarily and without excitement or a petition on the part of anybody, invited the policemen to enter the premises themselves in order that they might witness everything that was done there for the length of time they desired. And what is more, he not only permitted them to see and examine everything and take notes thereof, but he also gave them all the information they asked from him. Are these the acts of a person who knowingly violates the law?

"Partly, perhaps, the police department may have contributed unintentionally to instill into the accused the belief, erroneous, of course, that he was acting lawfully, inasmuch as he was not prevented from keeping his office open and treating therein those who came to him affected by the opium vice. This does not mean that we want to blame the police department on account of the inaction shown in this case up to the moment of the filing of the complaint. The court is far from having such an intention and idea. We only note the fact because it constitutes to a certain extent a justification for the accused. After all the fact of the case having been handled slowly has its natural explanation. It was a case which was entirely new in this country and of such a nature and importance that in order to proceed with firmness and safety much observation and study was required and both things demanded circumspection and time. The legal case which has been the motive for the filing of the complaint is based on a series of facts and circumstances which did not reveal to the naked eye the legal violation therein involved, as usually happens with ordinary cases. The violation of the law in the instant case is discovered only through a long and minute juridical analysis of all the points, physical as well as legal. This is undoubtedly the explanation of the inactive conduct of the authorities, which conduct may have perhaps created in the mind of the accused the conviction that he was acting in accordance with the law.

"Declaring, therefore, as it is hereby declared by the court, that there was a violation of the Opium Law alleged in the complaint, the accused, however, is fully absolved therefrom upon a reasonable doubt of his guilt. It is ordered that the office of the accused be immediately closed, be it where it may, and it is decreed that all the drugs, utensils and other effects exhibited in this case and all other things that are used or may have been used in the office of the accused be confiscated with the costs. So ordered."

As will be seen, his Honor held in substance that Doctor Gomez violated the Opium Law but that he probably did not realize that he was doing anything illegal; that he, consequently, did not act with criminal intent and was therefore not guilty of the crime or crimes charged in the information.

After his acquittal Doctor Gomez failed to close his clinic and continued the practice of injecting prohibited drugs into his Chinese patients. As a consequence, the respondent fiscal on March 16, 1925, presented a motion to the Court of First Instance asking that the part of the judgment in case No. 27550 which ordered the closing of the Doctor's clinic be executed and on the following day the court granted the motion and ordered the respondent sheriff to proceed at once to execute the part of the aforesaid judgment which related to the closing of the clinic, prohibiting Doctor Gomez, his agents, employees, or any other persons under his direction from entering the same. Doctor Gomez thereupon brought the present action in this court praying that the respondents herein be prohibited and restrained from carrying into effect the order of execution abovementioned on the ground that the clause of the judgment in case No. 27550 upon which the order is based, is null and void ab initio.

That the closing of the clinic in question is in the nature of a penalty and that the court was in error in imposing the penalty after acquitting the defendant, the herein petitioner, is too obvious for argument. The fact that it is not among the penalties prescribed by law for the offense with which he was charged, does not alter the case; it only makes the error more glaring. The real question here to be determined is, therefore, whether the part of the judgment which imposed the penalty is void ab initio or whether it is merely voidable. If the latter, it cannot be attacked collaterally in an action such as the present where the object is simply to restrain its execution. As stated in *Black on Judgments*, paragraph 170:

"* * * A voidable judgment is one which, though not a mere nullity, is liable to be made void when a person who has a right to proceed in the matter takes the proper steps to have its invalidity declared. It always contains some defect which may become fatal. It carries within it the means of its own overthrow. But unless and until it is duly annulled, it is attended with all the ordinary consequences of a legal judgment. The party against whom it is given may escape its effect as a bar or an obligation, but only by a proper application to have it vacated or reversed. Until that is done, it will be efficacious as a claim, an estoppel, or a source of title. If no proceedings are ever taken against it, it will continue throughout its life to all intents a valid sentence. If emanating from a court of general jurisdiction, it will be sustained by the ordinary presumptions of regularity, and it is not open to impeachment in any collateral action. * * *"

But it is otherwise when the judgment is void. "A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale by virtue of its authority finds himself without title and without redress." (Freeman on Judgments, sec. 117, citing *Campbell vs. McCahan*, 41 Ill., 45; *Roberts vs. Stowers*, 7 Bush, 295, *Huls vs. Buntin*, 47 Ill., 396; *Sherrell vs. Goodrum*, 3 Humph., 418; *Andrews vs. State*, 2 Sneed, 549; *Hollingsworth vs. Bagley*, 35 Tex., 345; *Morton vs. Root*, 2 Dill., 312; *Commercial Bank of Manchester vs. Martin*, 9 Smedes & M., 613; *Hargis vs. Morse*, 7 Kan., 259. See also *Cornell vs. Barnes*, 7 Hill, 35; *Dawson and Another vs. Wells*, 3 Ind., 399; *Meyer vs. Mintonye*, 106 Ill., 414; *Olson vs. Nunnally*, 47 Kan., 391; *White vs. Foote L. & M. Co.*, 29 W. Va., 385.)

It is not always easy to draw the line of demarcation between a void judgment and a voidable one, but all authorities agree that jurisdiction over the subject-matter is essential to the validity of a judgment and that want of such jurisdiction renders it void and a mere nullity. In the eye of the law it is non-existent. (*Fisher vs. Harnden*, 1 Paine, 55; *Towns vs. Springer*, 9 Ga., 130; *Mobley vs. Mobley*, 9 Ga., 247; *Beverly and McBride vs. Burke*, 9 Ga., 440; *Central Bank of Georgia vs. Gibson*, 11 Ga., 453; *Johnson vs. Johnson*, 30 Ill., 215; *St. Louis and Sandoval Coal and Mining Co. vs. Sandoval Coal and Mining Co.*, 111 Ill., 32; *Swiggart vs. Harber*, 4 Scam., 364; *Miller vs. Snyder*, 6 Ind., 1; *Seely vs. Reid*, 3 Greene [Iowa], 374.)

Applying the principles stated to the present case, it is obvious that in imposing upon the accused a penalty for an offense of which in the same judgment he was acquitted, the court acted entirely without jurisdiction over the subject-matter. In a criminal case there is in reality only one issue, viz: whether the defendant is guilty or not guilty. If he is found guilty the court acquires jurisdiction to impose a penalty; if he is found not guilty no court has the power to mete out punishment; a finding of guilty must precede the punishment. In a trial by jury no one will contend that the court has jurisdiction to impose a penalty after the jury has returned a verdict of not guilty and the same principles must necessarily apply where the facts are found by the court; the judge must find the accused guilty before he can assume jurisdiction to order the infliction of punishment.

The part of the judgment in question ordering the closing of the petitioner's clinic being in excess of the jurisdiction of the court and null and void, it cannot, of course, be executed. The petition is therefore granted and the respondents are hereby prohibited from executing the portion of the judgment in criminal case No. 27550 of the Court of First Instance of Manila which provides for the closing of the petitioner's clinic or place of business. No costs will be allowed. So ordered.

Johnson, Villamor, Johns, and Romualdez, JJ., concur.

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