

COLEGIO DE SAN JOSE, PETITIONER, VS. PEDRO MA. SISON, JUDGE OF FIRST INSTANCE OF BATANGAS, ET AL., RESPONDENTS.*G. R. No. 36259. December 07, 1931*

Ponente: IMPERIAL, J.

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The Colegio de San Jose, a corporation sole, instituted these prohibition proceedings to prevent the justice of the peace and the auxiliary justice of the peace of the municipality of Liang, Province of Batangas, or any other person appointed and acting in their stead, from continuing the hearing of civil cases Nos. 81 to 101, inclusive, instituted by said college in the aforementioned justice of the peace court.

At the instance of the petitioner, who gave a two-hundred-peso bond, Justice Street of this court issued a preliminary injunction restraining the aforesaid justices of the peace from continuing the hearing of said cases, until further notice. The writ thus issued was affirmed by this Supreme Court in a resolution dated October 9, 1931.

The facts upon which the petition is based are as follows:

It was about March 20, 1931, when the petitioner filed a number of complaints in the justice of the peace court of Liang, Batangas, against the respondents private individuals, for the recovery of the rents due on the portions of land occupied by them as tenants for the year 1930, the cases thus commenced being numbered 81 to 101, inclusive. Subsequently, the petitioner filed 80 other complaints against other tenants for the same purpose of recovering due and unpaid rents for the year 1930.

On April 23, 1931, the date fixed for the hearing of the 21 cases, the parties appeared in the justice of the peace court of Liang through counsel. The attorneys for the defendants applied for assessors under section 58 of the Code of Civil Procedure, and prayed that said assessors, once selected and qualified, sit in the trial of said cases. The justice of the peace denied the motion on the ground that the municipal council of Liang had not supplied him with a list of assessors, and that they had not been chosen in accordance with section 57 of that Code.

That same day, April 23, 1931, the defendant applied to the Court of First Instance of Batangas for a writ of mandamus (civil case No. 2650) against the petitioner and the justice of the peace of Liang, alleging that they had been unlawfully deprived of their right to be judged by assessors and praying that said justice of the peace be compelled to select the assessors and to admit them to sit in the hearings.

While the proceedings for mandamus were pending in the Court of First Instance of Batangas, no preliminary injunction having been sued out, the justice of the peace of Liang proceeded with the hearings of the 21 cases pending before him, at the instance of counsel for the plaintiff and in the absence of the defendants and their counsel.

While said 21 cases were pending in the justice of the peace court of Liang, the Court of First Instance of Batangas rendered a judgment in the mandamus proceedings instituted by the defendants in those cases requiring

the justice of the peace of Liang to try the 21 cases anew, and to appoint assessors for each of them to sit with him in accordance with the law.

The petitioner herein took exception and appealed from the judgment of the Court of First Instance of Batangas in said mandamus proceedings, but the auxiliary judge of the court, Braulio Bejasa, pursuant to section 144 of the Code of Civil Procedure, held, that, notwithstanding the appeal, said judgment should be executed, and consequently the justice of the peace should proceed with the new trial of the aforesaid cases.

The petitioner filed a motion for a new trial in the mandamus case, which was denied by Judge Pedro Ma. Sison, who further ordered the justice of the peace of Liang to proceed immediately with the new trial theretofore ordered.

The petitioner, having excepted to the order denying its motion for a new trial, filed the bill of exceptions, which is now pending approval.

The auxiliary justice of the peace of Liang, acting under instructions from the justice of the peace, set the 21 cases for new trial on the 8th and 9th of October, 1931, which was suspended by the preliminary injunction issued in the present case.

Counsel for both parties orally argued the merits of the case at the hearing had; and later filed their respective memoranda.

In our opinion this case raises but two important questions : The first relates to the right claimed by the private respondents to have their cases pending before the justice of the peace tried with the intervention of assessors; and the second is whether under the circumstances of the case, the Court of First Instance of Batangas had the power to order the execution of the judgment in the mandamus proceedings notwithstanding the appeal taken by the petitioner.

With regard to the first question, we have section 58 of the Code of Civil Procedure granting the parties in a civil case pending before a justice court the right to be heard with the intervention of assessors, and giving the procedure for their selection by the parties or their attorneys. This section reads as follows:

"SEC. 58. Rights of parties to have assessors.—Either party to an action may apply in writing to the justice of peace, who is to try the action, for assessors to sit in the trial. Upon the filing of such application the justice shall direct that assessors be provided. Thereupon the parties shall be notified forthwith to appear before the justice for the purpose of selecting assessors, who shall be selected from the list provided for in the preceding section, and shall be selected in the following manner in the presence of the justice: The plaintiff shall strike out from the list one name; then the defendant shall strike out one name, and so, alternately, the parties shall strike out names until but two remain on the list. The remaining two shall be the assessors to sit in the action; but if one or more of the two remaining are disqualified by law to sit as assessors, then the justice shall draw one or two names, as the case may be, by lot from those stricken out, and the person or persons thus drawn shall act as assessors, as the case may be."

Section 57 of the same Code prescribes the manner in which assessors shall be chosen by the municipal council, and the preparation of the list of assessors' name, to be supplied to each justice of the peace during the first week of the month of January every year.

An examination of the provisions of section 58 will show that the right thus granted to the parties to be judged by assessors is absolute, and that the duty imposed upon the justice of the peace is likewise mandatory. Once the petition in writing has been filed by any of the parties, it is the duty of the justice of the peace to grant it, and to proceed to the selection of the assessors in the manner prescribed. The petitioner argues that in denying the

private respondents' petition for assessors, the justice of the peace did not err, inasmuch as he had not been supplied by the municipal council of Liang with the list mentioned in section 57. We are of opinion that the reason given by the justice of the peace was neither good nor tenable, and did not exempt him from his imperative duty to grant the petition and to provide for the selection of the two assessors to which the aforesaid respondents were entitled. Under the circumstances it was his duty to require the municipal council of Liang to supply him with the list required by the law, which, according to the complaint filed in the present proceeding, was at once prepared by said municipal council and furnished to the justice of the peace. The respondents could not be deprived of a substantial right granted them by law. According to section 62 of the Code of Civil Procedure, the assessors thus appointed shall after qualifying sit at the hearings and advise the justice of the peace in the determination of all questions of facts as well as of law, and in case of their dissent as to the merits of the action, they are required by law to certify in writing their dissent, giving the reasons therefor, and such dissent shall be taken into account by the Court of First Instance in case of appeal. All these provisions necessarily lead to the conclusion that the intervention of the assessors is not an empty formality which may be disregarded without violating either the letter or the spirit of the law. It is another security given by the law to the litigants, and as such, it is a substantial right of which they cannot be deprived "without vitiating all the proceedings. Were we to agree that for one reason or another the trial by assessors may be done away with, the same line of reasoning would force us to admit that the parties litigant may be deprived of their right to be represented by counsel, to appear and be present at the hearings, and so on, to the extent of omitting the trial in a civil case, and thus set at naught the essential rights granted by the law to the parties, with the consequent nullity of all the proceedings.

It would be indeed improper to consider in these proceedings the merits of the judgment rendered in the mandamus case pending in the Court of First Instance of Batangas, inasmuch as an appeal has been taken from that judgment; nevertheless, in deciding this petition, we are compelled to pass upon the action of said court with regard to the appointment of assessors. We are convinced that the court did right in requiring the justice of the peace of Liang to proceed with the appointment of the assessors and the holding of new trials for the reason that those already had were null and void, the defendants and respondents having been deprived of a substantial right.

With reference to the last question, we hold that the respondent judges of first instance did not exceed their powers but acted within the discretion granted them by section 144 of the Code of Civil Procedure in providing for the execution of the judgment rendered in the mandamus case notwithstanding the appeal taken by the herein petitioner. For these reasons, the petition is hereby denied, and the preliminary injunction heretofore issued, quashed, with costs against the petitioner. So ordered.

Avanceña, C. J., Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

OSTRAND, J.:

I dissent.

DISSENTING

STREET, J.:

What has happened here, stated in simple terms, is this: One of the judges of the Court of First Instance of Batangas has issued an order, in response to an application for the writ of mandamus, directing a new trial in certain cases submitted in the court of a justice of the peace. There is obviously no express statutory authority for such an intervention on the part of the superior court in the ordinary procedure of the inferior court, and the proper method of correcting errors in such court is by review in the Court of First Instance upon appeal. The Code of Procedure does not in express terms even confer on the justice of the peace the right to grant a rehearing or new

trial in his own court. Much less does it, under any circumstance, confer upon the Court of First Instance the authority to order a new trial in the inferior court. If the provisions relative to proceedings in the courts of the justice of the peace be carefully examined, it will be found that those provisions are clearly designed for the accomplishment of a speedy trial in the inferior court and a quick removal to the Court of First Instance when the losing party deems himself aggrieved. Even under the provisions contained in sections 148 and 149 of the Code of Civil Procedure providing for relief from judgments obtained by fraud, accident or mistake, the law does not provide for a new trial, or for any trial, in the court of the justice of the peace, but—and this is remarkable—directs that the case be removed at once to the Court of First Instance for trial there. It is obvious that for a Court of First Instance to order a new trial in the court of a justice of the peace is directly opposed to the tenor of the procedural law.

Furthermore, the law governing the removal of cases from the court of the justice of the peace upon appeal to the Court of First Instance provides about as speedy & remedy as could be obtained by any other method of relief, and a much speedier remedy than can be obtained by a retrial in the lower court, to be followed in turn by an appeal and third trial in the higher court. In this connection it should be remembered that the trial in the Court of First Instance is a trial *de novo*, which means that the Court of First Instance tries the case without regard to the conclusions reached by the justice of the peace, and upon the proof adduced in the Court of First Instance only.

With reference to the irregularity which occurred in this case, namely, that at the hearing in the court of the justice of the peace assessors were not appointed as requested by the defendant in that court, it should be observed that the provisions of law relating to assessors in courts of the justice of the peace are duplicated in the provisions relating to trials in Courts of First Instance; and whatever right the defendants may have had to have these cases tried in the presence of assessors would be preserved in the higher court.

In the case before us it cannot be said that the defendants were prejudiced by the error committed in the court of the justice of the peace, because when the writ of mandamus was granted by the judge of the Court of First Instance, no judgment at all had been entered in the court of the justice of the peace in favor of anybody, nor has any judgment been there entered even as yet; and for aught that this court can know, or properly assume, the judgment might have been favorable to the defendants.

The action of the respondent judge who granted the writ of mandamus was therefore irregular, unwarranted, and in excess of his jurisdiction for the reasons: First, that the order made involved the granting of a new trial in a court of the justice of the peace, when the law provides for no such remedy; secondly, that the remedy was granted without any showing that the applicant for the writ had been prejudiced by the procedural irregularity complained of; and, thirdly, that the remedy by trial *de novo* upon appeal was available to the complaining party, in case he should have lost, which remedy is a plainer, speedier, and more adequate remedy than that available by a new trial in the court of the justice of the peace.

It is evident that the defendants (other than the judges and justices of the peace), having no confidence in their ability to defend the actions brought against them on the merits, are merely wasting the time of the court, and no patience should be indulged in dealing with their frivolities. The petition for certiorari should therefore have been granted by this court and the order for the new trial quashed, with the consequence that the proper judgment would be promptly entered in the court of the justice of the peace upon the proof submitted at the hearing on May 21, 1931, the losing party, or parties, being at liberty to appeal from the judgment if they should so desire.

With those who are unversed in the mysteries of legal science it is a standing criticism against courts and their methods that we are too much inclined to indulge in legal refinements to the prejudice of the prompt and speedy administration of justice. It is to be feared that the decision of the court in this case will not tend to dissipate that

error.

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