

RICARDO GEMORA, PLAINTIFF AND APPELLEE, VS. THE MUNICIPAL COUNCIL OF ILOG ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 38625. August 22, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendants from the judgment rendered by the Court of First Instance of Occidental Negros declaring null and void ordinance No. 7, series of 1931, of the municipal council of Ilog of the aforementioned province, and ordering the municipal treasurer of the said municipality to issue the license applied for by the herein plaintiff to establish and operate a cockpit upon payment of the corresponding fees, without special pronouncement as to costs.

During the oral argument of the case, counsel for the appellee reiterated his prayer contained in his brief to the effect that the appeal be dismissed without the necessity of passing upon its merits on the sole ground that the appellants have not made any assignment of errors in violation of the Rules of the Supreme Court.

We have examined the appellants' brief and found that it contains no assignment of errors. This constitutes an open violation of Rule 19 of the former rules of the Supreme Court.

Rule 20 of said Rules provides that no error not affecting the jurisdiction over the subject matter will be considered unless stated in the assignment of errors. In interpreting this rule, we have held in various cases that an appeal should be dismissed when an assignment of errors is not made in the brief. In the syllabus of the case of *Capellania de Tambobong vs. Antonio* (8 Phil., 683), such was the doctrine enunciated in the following language: "If upon an appeal the appellant fails to make any assignment of alleged errors on the part of the court below, the appeal must be considered as abandoned."

In the case of *Paterno vs. City of Manila* (17 Phil., 26), the court said:

" 'A rule of court cannot operate so as to render valid anything which is void in law, nor can it supersede a statute. But where a court is authorized to establish its own rules, such rules, when not repugnant to or in conflict with the organic laws, have all the force of law, and likewise as to an inferior court whose rules are prescribed by an appellate court.' (David vs. Aetna Ins. Co., 9 Iowa, 45; Walker vs. Ducros, 18 La. Ann., 703; Pratt vs. Pratt, 157 Mass., 503; Wood vs. Wood, 1 Ohio Dec, 589; Rio Grande Irr. Co. vs. Gildersleeve, 174 U. S., 603.)

"The appellant has not complied with these plain provisions providing for a uniform practice in this court. These rules mean something, otherwise they would not have been promulgated. They have been promulgated for several years and every practising attorney should be familiar with them.

"For these reasons we are of the opinion, and so hold, that this appeal should be dismissed and the judgment affirmed, with costs against the appellant."

In the case of *Tan Me Nio vs. Collector of Customs* (34 Phil., 944), the court said:

"Rule 20 provides that:

" 'No error not affecting the jurisdiction over the subject matter will be considered, unless stated in the assignment of errors and relied upon in the brief.'

"If, then, no errors will be considered unless they are specifically assigned, certainly if none are assigned, no question can be considered."

And in the case of *Granados and Granados vs. Bandelaria* (45 Phil., 505), we held that "no error not affecting the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and relied upon in the brief."

Following the precedents cited above, we are compelled to sustain the contention of the attorney for the appellee, and are of the opinion that the appeal should be dismissed, without the necessity of discussing or passing upon its merits.

Wherefore, the appeal is hereby dismissed, with the costs of this instance against the appellants. So ordered.

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

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