

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE ABAD LOPEZ, DEFENDANT AND APPELLANT.

G.R. No. 42199. January 14, 1936

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the municipal court of Manila for a violation of section 2694 of the Administrative Code and appealed to the Court of First Instance. He was again convicted and brings this appeal.

Section 2694 of the Revised Administrative Code, under which appellant was prosecuted, reads:

"SEC. 2694. Failure of person in charge of child to present same for vaccination.—Any parent, guardian, or other person having charge of any child over one month old who shall fail to present the same for vaccination, as required by law, or who shall fail to return any such child to the vaccinating officer for verification of the effect of the operation, or for later vaccination, as the case may be, shall be fined ten pesos for each offense."

Appellant is the father of twin baby girls. He is a doctor in good standing, practicing his profession in the City of Manila, and belongs to the homeopathic school. He contends that vaccination can be accomplished by administering drugs through the mouth. The prosecution contends that the vaccination required by section 2694 above quoted is by the scarification method. It is not disputed that the children have not been vaccinated by the scarification method and that the father will not have it done unless compelled by law.

The right of the State to compel compulsory vaccination is well established (*Jacobson vs. Massachusetts*, 197 U. S., 11), and not put in question in these proceedings. The decisions of American courts are uniform to the effect that whatever dispute may exist between the various schools of medicine as to how smallpox is to be prevented, that question is for the legislature, not for the courts, to determine.

The word "vaccination" standing alone means to the common man, scarification, not drugging, and this is the definition given by the standard dictionaries and likewise is the interpretation given by American judicial decisions. There is no reason to believe that the legislature used this term in any other sense, but we are not left in any doubt because in the same section they speak of a vaccination as an "operation". In the immediate preceding section of the Revised Administrative Code, section 2693, the legislature says:

"Any person liable to vaccination who shall refuse to submit to the operation * * *."

Certainly taking a drug by the mouth is not submitting to an operation.

Appellant also contends that he cannot be convicted as he signed a certificate as a practicing physician that the two children had been vaccinated and bases his contention upon section 1054 of the Administrative Code, which reads:

"SEC. 1054. Persons liable to vaccination.—Every person in the Philippine Islands shall submit to vaccination when thereunto lawfully required, unless he shall furnish satisfactory evidence either by a certificate from a

physician or vaccinator, or otherwise, to the effect that he is immune from the disease of smallpox. Such vaccination shall be performed gratis."

As he admits that he had not vaccinated the children as required by law, the certificate which he furnished himself is of no value.

The judgment appealed from is therefore affirmed, with costs. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, Diaz, Butte, and Vickers, JJ., concur.

DISSENTING

RECTO, J.:

The facts of the present case are very simple and there exists no controversy about them. Briefly stated, they are: That the accused Dr. Jose Abad Lopez, a physician of good standing who has an open clinic in this city, has twin baby girls named Carmen and Candelaria; that he has not presented them for vaccination against smallpox as required by section 2694 of the Administrative Code because he himself took charge of immunizing them according to the method followed in the homeopathic school to which the accused belongs, as evidenced by the certificate of immunity, Exhibit 2, issued in accordance with section 1054 of said Code. There is no evidence that the homeopathic school is prescribed, as illegal, in this jurisdiction. In other words, there is nothing of record to show that the practice of the methods of said school constitutes an illegal practice of medicine. On the contrary, it is stated in the appealed sentence that the method of vaccination through the mouth, proclaimed by the homeopaths, "is defended by eminent medical authorities" and that in the opinion of the majority of this court the accused homeopath is a physician of good standing in the locality. As to the efficacy of the method of vaccination employed by the accused, the witnesses for the prosecution have not dared question it, so much so that neither in the appealed sentence nor in the majority opinion of this court is there any pronouncement adverse to the appellant's contention that the method in question is as effective as or more effective than that employed by the Government in producing immunity.

The legal provisions pertinent to the question are those contained in sections 2694 and 1054 of the Administrative Code, which read:

"SEC. 2694. Failure of person in charge of child to present same for vaccination.—Any parent, guardian, or other person having charge of any child over one month old who shall fail to present the same for vaccination, as required by law, or who shall fail to return any such child to the vaccinating officer for verification of the effect of the operation, or for later vaccination, as the case may be, shall be fined ten pesos for each offense."

"SEC. 1054. Persons liable to vaccination.—Every person in the Philippine Islands shall submit to vaccination when thereunto lawfully required, unless he shall furnish satisfactory evidence either by a certificate from a physician or vaccinator, or otherwise, to the effect that he is immune from the disease of smallpox. Such vaccination shall be performed gratis."

The Solicitor-General also cites section 1051 of said Code which orders the use of vaccine virus in vaccination, instead of smallpox virus and smallpox lymph, declaring the use of the latter substances unlawful, but we believe it is not applicable to the question. In fact, Dr. Abad Lopez is not charged with having used smallpox virus or smallpox lymph in immunizing his daughters against this disease.

If the Administrative Code did not have the provision contained in section 1054, but only that of section 2694, the Government's contention would be founded and I would have no cause to oppose the majority opinion. I

understand, however, that the provision of section 2694 is conditioned upon that of section 1054. By interpreting one in connection with the other and by harmonizing both provisions, it is seen that the legislator makes it imperative for a person to present himself for vaccination only when he cannot furnish satisfactory evidence either by a certificate from a physician or vaccinator, or otherwise, to the effect that he is immune from smallpox. In other words, if he can produce such certificate, his obligation to present himself for vaccination ends and, consequently, his failure to do so ceases to be punishable.

Such is, precisely, the case of this accused in connection with his legal obligation to present his daughters Carmen and Candelaria for vaccination. He immunized them by means of the homeopathic method, issued the corresponding certificate of immunity and presented it, when required, to the health officers. In order that the accused may be declared to have violated the law, in spite of all these, there must be a previous finding to the effect that Exhibit 2 is not a certificate of immunity. I have already stated that the appealed sentence as well as the opinion concurred in by the majority of the members of this court is silent on this point. What I deem very disputable in said opinion is the fact that the accused is not punished for failure to attain the end proposed by the law which is immunity from smallpox, but for failure to employ a method suggested by it—vaccination by means of scarification—in order to attain said end. If the law's concern in this case were the employment of a certain procedure and not the attainment of a definite end, it should have required a certificate of vaccination in section 1054 of the Administrative Code instead of a certificate of immunity. But in requiring, in unequivocal terms, a certificate of immunity, instead of a certificate of vaccination, it evidently made it understood that it is interested in the attainment of its purpose, not in the method of attaining it.

Having arrived at this conclusion, I deem it unnecessary to discuss the true legal meaning of the word vaccination with the majority of this court. They claim that this word implies the scarification method to the exclusion of all others. Possibly said word originally had that meaning because the only method then known was the scarification method. But as the saying goes, heretofore much water has passed under the bridges. And while science has attained progress such as our forefathers never dreamed of in their most optimistic moments, the linguistic academies, pledged to conserve the purity and traditions of the language, seem to have failed to keep abreast with such progress, invariably lagging behind in not a few cases. Hence, there are probably many words in the dictionary which, in the absence of others of approved usage, are still employed to express ideas conveying the latest scientific advancements but different from those originally represented by them.

I am afraid that the majority opinion will result in sanctioning intolerance on the part of official science by punishing those who employ methods which, although scientific, depart from those prescribed or approved by it. I reiterate that the purpose of the law has been served in this case. The only question is of method, and this inexplicable dogmatism of the Government reminds us of the time of Galileo when official science, unable to conceive that the earth was round, used to drown out the voice of the dissenters by means of the bonfire, the rack and the wheel.

For the foregoing considerations, I am of the opinion that the accused should be acquitted.

ABAD SANTOS, J.:

I concur in the dissenting opinion of Justice Recto.

IMPERIAL, J.:

I concur in the foregoing dissenting opinion.

GODDARD, J.:

I concur in the dissenting opinion of Justice Recto. Special emphasis should be placed on the provision of section 1054 of the Administrative Code which provides that "Every person * * * shall submit to vaccination * * * unless he shall furnish satisfactory evidence either by a certificate of a physician, or otherwise, to the effect that he is immune from the disease of smallpox." Exhibit 2 of the defendant is the certificate required by this section.

Judgment affirmed.

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