

ELADIO R. ALDECOA, PETITIONER, VS. FERNANDO JUGO, JUDGE OF FIRST INSTANCE OF LAGUNA, AND SEGUNDO MARTINEZ, Y PROVINCIAL FISCAL OF LAGUNA, RESPONDENTS.*G.R. No. 43244. April 09, 1935*

Ponente: VICKERS, J.

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This is an application for a writ of certiorari. There is no question as to the essential facts. It appears that in civil case. No. 5825 of the Court of First Instance of Laguna, between Antonio Estiva and Angela Reyes, plaintiffs, and Gonzalo Cawil, Felix A. Gesmundo, Estanislao Alinea, Romualdo Banatlaog, Alejandro M. Panis, and Eladio R. Aldecoa, defendants, for the annulment of certain deeds of conveyance and the recovery of damages, the trial judge in his decision, which was affirmed by this court,[1] ordered that the record be referred to the fiscal for investigation with a view to prosecuting the defendants that appeared to him to be criminally liable. Antonio Estiva, one of the plaintiffs, testified in that case. On October 9, 1934, the fiscal filed a complaint in the Court of First Instance of Laguna against Alejandro M. Panis, Eladio R. Aldecoa, Felix A. Gesmundo and Romualdo Banatlaog, charging them with the crime of falsification of public documents. This complaint was referred to the justice of the peace of the provincial capital for the corresponding preliminary investigation. but as he was disqualified, the justice of the peace of Pagsanjan was designated to make the preliminary investigation.

Because Antonio Estiva had died in the meantime, the fiscal attempted to introduce into evidence to prove the charge a transcript of the testimony of Estiva in the civil case. The accused objected to the admission of this transcript as evidence on the ground that it deprived the accused of their constitutional right to be confronted at the trial by and to cross-examine the witnesses against them. The justice of the peace of Pagsanjan sustained the objection, whereupon the provincial fiscal filed a petition (civil case No. 6596) in the Court of First Instance of Laguna against the justice of the peace and the defendants in the criminal case, setting forth the facts and praying that in due course the justice of the peace of Pagsanjan be ordered to admit as evidence the transcript of the testimony of the deceased Antonio Estiva.

In a combined demurrer and answer the attorneys for the justice of the peace and his co-defendants opposed the petition on the ground that the Court of First Instance had no jurisdiction to order the justice of the peace to admit the transcript of the testimony in question, because the admission of said evidence was within the discretion of the justice of the peace making the preliminary investigation, and that mandamus would not lie to compel the justice of the peace to decide the question in any particular way; that the fiscal had another adequate remedy by appeal to the Court of First Instance from the decision of the justice of the peace in accordance with section 14 of General Orders, No. 58; and that in any event said transcript of the testimony of Antonio Estiva taken in the civil case was not admissible as evidence in the criminal case over the objection of the accused.

After hearing the parties, the respondent judge found that said transcript of the testimony was admissible in accordance with paragraph 5 of section 15 of General Orders, No. 58; that the right of appeal from the order of the

justice of the peace dismissing the complaint was not an adequate remedy, and that furthermore in accordance with section 228 of the Revised Administrative Code it is the duty of the Court of First Instance to give advice and instructions to justices of the peace, and on January 30, 1935 ordered the justice of the peace to admit as evidence in the preliminary investigation the transcript of the testimony in question. The attorneys for the respondent in that case then filed a motion for a reconsideration which was denied on February 25, 1935. Instead of appealing from the aforesaid order of the Court of First Instance, Eladio R. Aldecoa instituted the present proceedings in this court for the annulment of said order.

In his answer to the petition in this court for a writ of certiorari the Solicitor-General alleges that the transcript of the testimony in question was admitted by the justice of the peace on February 26, 1935, that is, before the present petition was filed, and he further alleges that the petitioner had an adequate remedy by appeal from the order complained of, and that he still has an adequate remedy by appeal from any judgment that may be rendered against him in the criminal case.

Section 514 of the Code of Civil Procedure provides that the Supreme Court shall have original jurisdiction by certiorari proceedings over the proceedings of Courts of First Instance wherever said courts have exceeded their jurisdiction, and there is no plain, speedy, and adequate remedy by bill of exceptions, or appeal, or otherwise. In the present case the petitioner had a plain, speedy, and adequate remedy by appeal from the order of the respondent judge, but instead of availing himself of that remedy he filed these certiorari proceedings in this court. We cannot approve of this practice, and the petition must be denied. We are not unmindful of the fact that in certain cases certiorari will lie notwithstanding the existence of the right of appeal, because the ordinary method of appeal is not adequate, but the present case falls clearly within the established rule of this court that a writ of certiorari will be issued only when it clearly appears that the court to which it is to be directed acted without or in excess of its jurisdiction, and there is no plain, speedy, and adequate remedy by bill of exceptions or appeal or otherwise.

In order, however, that our denial of the petition for a writ of certiorari in this case may not be construed as approving the action taken by the respondents, we deem it proper to add that in our opinion the justice of the peace of Pagsanjan acted advisedly in refusing to admit over the objection of the accused the transcript of the testimony in question, which was offered for the purpose of proving the allegations of the criminal complaint, because the admission of it under the circumstances would have deprived the accused of their right to be confronted by and to cross-examine the witness against them, in contravention of section 15 of General Orders, No. 58 and section 3 of the Philippine Autonomy Act (Act of Congress of August 29, 1916).

The respondent judge relied on the latter part of paragraph 5 of section 15 of General Orders, No. 58, which provides that where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the accused or his counsel, the defense having had an opportunity to cross-examine the witness, the deposition of the latter may be read, upon satisfactory proof to the court that he is dead or insane, or cannot with due diligence be found in the Islands. This provision does not refer to testimony taken in a civil case, where the accused was one of the parties, but to the preliminary investigation or prior trial of the criminal case in which such deposition is offered.

The Solicitor-General was unable to find a single decision that sustains the contention of the respondents. The cases cited in the answer are not in point.

The fact that the present criminal action involves the same facts as the civil action makes no difference. The actions are essentially different, and so is the cross-examination of the witnesses in the two cases.

Furthermore, it was not necessary for the provincial fiscal to apply to the Court of First Instance for an order to

require the justice of the peace to admit the transcript of the testimony in question, or for the judge of the Court of First Instance to issue such an order, because if the justice of the peace had dismissed the complaint, the fiscal could have filed a new complaint in the Court of First Instance. In *United States vs. Marfori* (35 Phil., 666), it was held that if a provincial fiscal is not satisfied with an order of discharge entered by a justice of the peace as a result of a preliminary investigation, such order is not a bar to the institution of new proceedings looking to the holding of another preliminary investigation by the justice of the peace who held the first investigation, or before the judge of a Court of First Instance in the exercise of his functions as a committing magistrate.

We find no merit in the suggestion that the respondent judge had a right to issue the order complained of because the justice of the peace of Pagsanjan was making the preliminary investigation at the instance of the respondent judge, and that it is the duty of the judge of the first instance to give advice and instructions to justices of the peace in his district. The complaint in question was referred to the justice of the peace of Pagsanjan for preliminary investigation. It is immaterial where it was originally filed. The administrative supervision of a judge of first instance over the justices of the peace in his district did not authorize the respondent judge to require the justice of the peace of Pagsanjan to admit the evidence in question. It was for the justice of the peace to admit or reject the evidence in question in the exercise of his own discretion and independent judgment.

The petition is denied, with the costs against the petitioner, and the preliminary injunction issued herein is dissolved.

Malcolm, Abad Santos, Hull, Butte, Goddard, and Diaz, JJ., concur.

Petition denied.

[1] *Estiva and Reyes vs. Cawil* (59 Phil, 67).

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