

**ARSENIO C. ROLDAN, JUDGE-AT-LARGE OF FIRST INSTANCE
ASSIGNED TO THE PROVINCE OF BULACAN, AND IÑIGO S. DAZA, AS
PROVINCIAL FISCAL OF BULACAN, PETITIONERS, VS. PEDRO
VLLLAROMAN, D...**

G.R. No. 46825. October 18, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

By this petition for prohibition, petitioners would have the Court of Appeals abstain absolutely from taking cognizance of, hearing and deciding the certiorari proceedings instituted by the respondents Pedro Villaroman and Diego Cuevas against Judge Arsenio C. Roldan and provincial fiscals Iñigo S. Daza and Roman de Jesus, the first two being petitioners, bearing CA-G. R. No. 5295 of said Court of Appeals, and would further have, during the pendency of this petition, a writ of preliminary injunction issued to the end that the Court of Appeals abstain from executing or carrying out the writ of preliminary injunction issued by it in the aforesaid certiorari proceedings.

On February 6, 1939 the provincial fiscal of Bulacan, Iñigo S. Daza, filed an information in the justice of the peace court of San Rafael, Bulacan, against the respondents Pedro Villaroman and Diego Cuevas, Pablo de la Cruz and one, John Doe, charging them with having committed the crime of murder upon the person of Joaquin Venturina, on November 30, 1936, in the municipality of San Rafael, Province of Bulacan, with treachery and the aggravating circumstances of evident premeditation and price or reward. Villaroman and Cuevas were arrested and at the preliminary investigation they pleaded not guilty. Both were set at liberty under bail for P20,000 which each of them put up. As a result of the preliminary investigation, the justice of the peace elevated the case to the Court of First Instance of Bulacan and there docketed as criminal case No. 7652. In the said Court of First Instance the same provincial fiscal reproduced the very allegations of the information filed by him in the justice of the peace court.

Upon arraignment in the Court of First Instance, Villaroman and Cuevas also pleaded not guilty. The trial of the case went forward against the two accused and the prosecution presented the greater part of all its evidence. While the prosecution was adducing its evidence, Cuevas was taken ill and had to be confined in the Manila Central Hospital. The petitioner judge, who was hearing the case, denied various petitions for postponements filed indiscriminately by the attorneys for the respondents-defendants. When the fiscal rested his case, waiving the testimony of many government witnesses appearing in the list which he had prepared and served upon the attorneys for the defense, the latter reiterated the petition for postponement on the ground, principally, that the accused Cuevas was absent due to sickness. The court denied the petition and compelled the attorney for Villaroman to present the evidence in defense of this accused. The attorney felt bound to abide by the order and so presented some witnesses for the defense. When he ran short of available witnesses, as the others were not present, he again asked for the post-ponement of the trial to which the court acceded; but before Villaroman left the courtroom, the prosecuting attorneys filed a written motion asking for the cancellation of the bonds filed by the accused. The attorneys for the latter sharply opposed this, but the court sustained the motion, cancelled the

bonds and ordered the arrest of the accused. As a result, Villaroman was rearrested as well as Cuevas who was confined in the Bilibid Prison hospital.

At this stage of the case, Pedro Villaroman and Diego Cuevas Instituted certiorari proceedings in the Court of Appeals against the petitioners and fiscal Roman de Jesus, CA-G. R. No. 5295, impugning in their petition the jurisdiction of the petitioner judge to proceed with the criminal case for murder in the absence of Diego Cuevas, and asking that a writ of preliminary injunction be issued, enjoining the petitioner judge from setting the continuation of the trial of the criminal case until further order. The Court of Appeals issued the writ of preliminary injunction prayed for and ordered the petitioner judge to abstain from going forward with the trial of said case until further order. The Solicitor-General, on behalf of the then respondents, asked that the certiorari proceedings be transferred to the Supreme Court for want of jurisdiction of the Court of Appeals to try and decide the same, and asked likewise for the setting aside of the writ of preliminary injunction addressed to the petitioner judge. The Court of Appeal denied both petitions, holding that it had power and jurisdiction to issue the writ of preliminary injunction as well as to take cognizance of and decide the certiorari proceedings. The resolutions thus promulgated, Justice Enage dissenting and Justices Paras, Montemayor and A. Reyes reserving their votes, are the ones which gave rise to the remedy by prohibition now before us.

Passing upon the petition of the herein petitioners, this court granted the writ of preliminary injunction prayed for and ordered the Court of Appeals to abstain from carrying out and executing the writ of preliminary injunction issued by it.

The petitioners contend that the Court of Appeals has no original jurisdiction to take cognizance of the petition for certiorari filed by Villaroman and Cuevas under section 145-G of the Revised Administrative Code, inserted by section 3 of Commonwealth Act No. 3, reading:

"Sec. 145-G. Original jurisdiction of the Court of Appeals.—The Court of Appeals shall have original jurisdiction to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and process in aid of its appellate jurisdiction."

The Spanish translation of said section is couched in the following language:

"Art. 145-G. Jurisdiction originaria del Tribunal de Apelacion.—El Tribunal de Apelacion tendra jurisdiccion originaria para librar mandamientos perentorios de inhibition, de avocation y de habeas corpus, interdictos prohibitorios y todos los demas mandamientos y providencias auxiliares necesarios en el ejercicio de su jurisdiccion en apelacion."

Comparing both texts, it will be noted that the Spanish translation is incorrect because the English phrase "in aid of its appellate jurisdiction" was translated "necesarios en el ejercicio de su jurisdiction en apelacion." The Spanish translation of the phrase does not quite convey the idea expressed in the English phrase. Commonwealth Act No. 3 was finally approved in English by the First National Assembly, wherefore, the English text of the entire law should govern (section 15 of the Revised Administrative Code of 1917).

Section 145-G is the provision of Commonwealth Act No. 3 which confers on the Court of Appeals original jurisdiction to issue writs of mandamus, prohibition, injunction, certiorari, and habeas corpus, and all other auxiliary writs known and permitted by the law of procedure; but the granted power or jurisdiction is subject to the condition that such writs should be in aid of its appellate jurisdiction. No other thing is meant by the phrase "in aid of its appellate jurisdiction" but the legal rule.

The resolutions of the Court of Appeals denying the motions of the Solicitor-General, and now assailed in this petition, rely principally upon its decision rendered in the case of *Mujer vs. Court of First Instance of Laguna*

(CA-G. R. No. 613, September 21, 1936), holding that the phrase "in aid of its appellate jurisdiction" only refers to its proximate antecedent "and all other auxiliary writs and process", and not to the writ of mandamus or to the writs of prohibition, injunction, certiorari, and habeas corpus mentioned in the only sentence of the said section, in reliance upon the rule of interpretation that a qualifying phrase should be understood as referring to the nearest antecedent. The rule of interpretation applied is in fact the general rule in the interpretation of qualifying or conditional phrases found in a law (59 C. J., sec. 584, p. 985); but the rule is subject to the exception that where the intention of the law is to apply the phrase to all the antecedents embraced in the provision, the same should be made extensive to the whole. This exception is summarized in the same volume of the Corpus Juris, at pages 985 and 986, as follows: "This rule is, however, merely an aid to construction and will not be adhered to where extension to a more remote antecedent is clearly required by a consideration of the entire act. Slight indication of legislative intent so to extend the relative term is sufficient. Where several words are followed by a clause as much applicable to the first and other words as to the last, the clause should be read as applicable to all." (Stevens vs. Illinois Cent. R. Co., 137 N. E., 859; Warner vs. King, 107 N. E., 837; Greenough vs. Phoenix Ins. Co. of Hartford, 92 N. K, 447; State vs. Public Service Commission, 34 S. W. [2d], 486; State vs. St. Louis, 73 S. W., 623; Nebraska State By. Commission vs. Alfalfa Butter Co., 178 N. W., 766; Myer vs. Ada County, 293 P., 322; Porto Rico Ry., Light & Power Co. vs. Mor, 253 U. S., 345.)

The cardinal rule in the interpretation of laws is to ascertain and give effect to the intention of the legislator (Borromeo vs. Mariano, 41 Phil., 322; People vs. Concepcion, 44 Phil., 126); and when the language of a law is reasonably susceptible of two or more interpretations, that should be adopted which tends to give effect to the manifest intention of the legislator and to promote the purpose for which it was enacted, and that interpretation should be rejected which tends to defeat the purpose which the legislator has intended to attain by its enactment (U. S. vs. Toribio, 15 Phil., 85; U. S. vs. Navarro, 19 Phil., 134). A close study of the provisions of Commonwealth Act No. 3 and those of the amending Act, No. 259, will disclose that the purpose of the National Assembly was to confer upon the Court of Appeals an appellate jurisdiction that is special and limited, unlike the original and appellate jurisdiction conferred upon the Supreme Court and upon the Courts of First Instance of the Archipelago.

Commonwealth Act No. 3 reorganized the membership of the Supreme Court, created the Court of Appeals and defined the original and appellate jurisdiction of both. Section 2 amended section 138 of the Revised Administrative Code relative to the jurisdiction of the Supreme Court. Section 138 was subsequently modified by section 3 of Commonwealth Act No. 259 which amended paragraphs (4) and (5). Section 138, as finally amended, reads:

"Sec. 138. Jurisdiction of the Supreme Court.—The Supreme Court shall have such original jurisdiction as may be possessed and exercised by the Supreme Court of the Philippines at the time of the approval of this Act, including cases affecting ambassadors, other public ministers, and consuls.

"The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm, on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts as herein provided, in— "(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question;

"(2) All cases involving the legality of any tax, impost, assessment or toll, or any penalty imposed in relation thereto;

"(3) All cases in which the jurisdiction of any inferior court is in issue;

"(4) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment, and those involving other offenses which, although not so punished, arose out of the same occurrence or which

may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately;

"(5) All civil cases in which the value in controversy exceeds fifty thousand pesos, exclusive of interests and costs, or in which the title or possession of real estate exceeding in value the sum of fifty thousand pesos to be ascertained by the oath of a party to the cause or by other competent evidence, is involved or brought in question. The Supreme Court shall likewise have exclusive jurisdiction over all appeals in civil cases, even though the value in controversy, exclusive of interests and costs, is fifty thousand pesos or less, when the evidence involved in said cases is the same as the evidence submitted in an appealed civil case within the exclusive jurisdiction of the Supreme Court as provided herein."

Section 145-F of the Revised Administrative Code, inserted by section 3 of Commonwealth Act No. 3, also reads:

"SEC. 145-F. Jurisdiction of the Court of Appeals.—The Court of Appeals shall have exclusive appellate jurisdiction of all cases, actions, and proceedings, not enumerated in section one hundred and thirty-eight of this Code, properly brought to it from Courts of First Instance. The decision of the Court of Appeals in such cases shall be final; Provided, however, That the Supreme Court in its discretion may, in any case involving a question of law, upon petition of the party aggrieved by the decision and under rules and conditions that it may prescribe, require by certiorari that the said case be certified to it for review and determination, as if the case had been brought before it on appeal."

It is inferred from a reading of sections 138 and 145-F that the Court of Appeals has exclusive appellate jurisdiction only in all cases not enumerated in the first of said sections, brought to it on appeal from Courts of First Instance. Section 145-F does not enumerate the cases appealable exclusively to the Court of Appeals, but bearing in mind the other legal provisions relative to cases which may be appealed from Courts of First Instance, it will be seen that cases, whether civil or criminal, appealable to the Court of Appeals are limited as to kind, amount and nature. The Court of Appeals has no power of supervision, unlike the Supreme Court and the Courts of First Instance. Under Commonwealth Acts Nos. 3 and 259, the decisions of the Court of Appeals are final only with respect to disputed and adjudicated facts; all questions of law are appealable to the Supreme Court. Generally, in the special remedies by mandamus, prohibition, injunction and certiorari and in habeas corpus proceedings, the questions raised by the parties are legal in character. In the light of these legal provisions, it is evident that the National Assembly, in conferring original jurisdiction upon the Court of Appeals to take cognizance of petitions for mandamus, prohibition, injunction, certiorari and habeas corpus, did so with the limitation that it should be exercised in aid of its appellate jurisdiction. It is groundless to assume that the National Assembly meant to confer this jurisdiction without any limitation if, ultimately, the decisions to be rendered by the Court of Appeals may again be appealed to the Supreme Court because involving, in many cases, questions of law.

In the case of *Mujer vs. Court of first Instance of Laguna*, *supra*, invoked as a precedent upon which the questioned resolutions are based, is cited as authority the case of *Hyatt vs. Alien* (54 Cal., 353, 357), and the case of *Tyler vs. Houghton* (25 Cal., 26), cited with approval in the first, wherein the Supreme Court of the State of California, interpreting section 4, Title VI, of the Constitution of that State, held that it had jurisdiction to pass upon petitions for mandamus, prohibition, injunction, certiorari and habeas corpus. The constitutional provision relied upon by the Supreme Court of California is couched in the following language:

"The court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction."

Comparing this constitutional provision with section 145-G of the Revised Administrative Code, inserted by the

amendment introduced by Commonwealth Act No. 3, it will be seen that both provisions differ substantially in their wordings, inasmuch as the first does not contain the phrase "in aid of its appellate jurisdiction" which is found in the record. The language of both provisions not being identical, the ruling of the Supreme Court of California in the cases of *Hyatt vs. Allen* and *Tyler vs. Houghton* does not constitute and cannot be invoked as a precedent to bulwark the conclusion reached in the *Mujer* case as well as in the resolutions complained of.

Section 2, Article VII, of the Constitution of the State of Louisiana, provides:

"S 2. Habeas Corpus—Power to issue writ—Supervisory powers of appellate courts.—The Supreme Court, the Court of Appeal, and each of the judges thereof, subject to review by the court of which he is a member, and each district judge throughout the State including judges of the Civil and Criminal District Courts in the Parish of Orleans, may issue writs of habeas corpus, in behalf of any person in actual custody in cases within their respective jurisdictions; and may also in aid of their respective jurisdictions, original, appellate, or supervisory, issue writs of mandamus, certiorari, prohibition, quo warranto, and all other needful writs, orders and process, and where any of said writs are refused, the appellate courts shall indicate the reasons therefor."

It will be noted that the closing portion of the constitutional provision is closely similar to section 145-G of our law in providing "and may also in aid of their respective jurisdictions, original, appellate, or supervisory, issue writs of mandamus, * * *." Interpreting this constitutional provision in connection with the original jurisdiction of the Court of Appeal of Louisiana to issue writs of mandamus, certiorari, prohibition, quo warranto and habeas corpus, the Supreme Court of said State, in the cases of *Riccobono vs. Kearney* (114 So., 707), resolved the question negatively, on the ground that the original jurisdiction of said Court of Appeal to issue the said writs is confined to cases in which it is exercised in aid of its appellate jurisdiction. In said case the Supreme Court of Louisiana said:

"From the foregoing provisions of the Constitution it appears that the Court of Appeal for the Parish of Orleans has appellate jurisdiction only, with the exception of the right to issue the writ of habeas corpus, and the right to issue in aid of its jurisdiction, which is appellate only, save as here stated, writs of mandamus, certiorari, prohibition, and other needful orders and process. Therefore, as the Court of Appeal for the Parish of Orleans has appellate jurisdiction only, save as above stated, the question is resolved into whether the rule that issued was in aid of the appellate jurisdiction of that court, for the limited original jurisdiction which it possesses is not here involved.

"In our opinion, the rule was not in aid of the appellate jurisdiction of that court. The fact that the recorder refused to register the judgment could not affect in any manner the jurisdiction of that court, which was appellate only, over the case in which the judgment was rendered. The right, if it existed, to have the judgment registered in the mortgage office, is a right distinct from the appeal, and not inseparably connected with it. It is one which should have been enforced independently of the appeal by proceedings begun in a court possessing original jurisdiction, in this instance the civil district court for the parish of Orleans.

"The present case is unlike the cases of *Dannenmann & Charlton vs. Charlton* (113 La., 276; 36 So., 965) ; *Cluseau vs. Wagner* (126 La., 375; 52 So., 547) ; and *Daly vs. Brook* (133 La., 752; 63 So., 318), cited by plaintiff, and relied on by the Court of Appeal in overruling the plea to the jurisdiction. In the *Dannenmann & Charlton* case a moneyed judgment was recovered in the trial court, and recorded in the mortgage records, while a suspensive appeal was pending in this court from the judgment rendered. In each of the remaining cases cited, moneyed judgments were obtained in the trial court, and recorded in the mortgage records prior to the taking of a suspensive appeal. In each of these cases the appellant proceeded by rule in this court to force the appellee and the recorder of mortgages to cancel the inscriptions of the judgment. This court in each of those cases, held or considered that the registry of the judgments was a partial execution of them, in violation of the right of suspensive appeal, and maintained jurisdiction in order to preserve intact the suspensive appeal in each case, and to prevent any interference with it. The facts in the present case are entirely different. Here

there was no partial execution of the judgment, which was rendered for the first time on appeal, and no interference with the appeal. Here the issue simply is whether the Court of Appeal has jurisdiction, in a proceeding commenced before it, to force the recorder of mortgages to register in the mortgage records a judgment rendered by it while the appeal in the case is still pending. To this we answer no, and do so because the proceeding is not in aid of the appellate jurisdiction of the court.

"For these reasons, the judgment under review is annulled and set aside, the exception to the jurisdiction is sustained, and the rule issued by the Court of Appeal is dismissed."

The Court of Appeal of Louisiana followed the same interpretation in the cases of *Wall vs. Tangipahoa School Board* (119 So., 371) ; *State ex rel. Truxillo vs. Gillbert* (128 So., 204) ; and *State ex rel. Griffin vs. Morgan* (130 So., 868).

In the State of Indiana, section 803, Chapter 87 of the Laws of 1915, section 1244, Burns' 1926, confers original jurisdiction on the Supreme Court and on the Court of Appeals of the State to issue writs of mandamus and prohibition in aid of their appellate jurisdiction and functions in the following language:

"Writs of mandate and prohibition may issue out of the Supreme and Appellate Courts of this State in aid of the appellate powers and functions of said courts respectively."

The Supreme Court of the State of Indiana, interpreting its original jurisdiction to issue the aforesaid writs in section 803, said the following in the case of *State ex rel Hanrahan vs. Chambers* (181 N. E., 282) :

"The mandate sought by relatrix is not 'in aid of the appellate powers and functions of this court, first, because it does not seek to compel the signing of a bill of exceptions, the granting of permission to file a motion for a new trial, or any action of like character necessary to perfect or present a record for appeal, and, second, because any appeal from the action of the probate court in approving annual report would lie to the Appellate Court and not to the Supreme Court, unless a constitutional question was involved therein. (Section 1356, Burns' 1926. See, also, sections 1772, 1797, Burns' 1926.)"

In the case of *Kensinger vs. Cox* (141 N. E., 225), the Supreme Court of Indiana, interpreting the same law, said:

"The petition for a writ of mandamus was filed in the Supreme Court on September 26, 1923, which was 269 days after the decision is alleged to have been made and the judgment to have been rendered in the election contest, and it does not allege that a motion for a new trial had been ruled on which postponed the running of the time allowed (180 days) for taking an appeal, nor does it aver that an appeal already had been perfected, in aid of which this writ is asked.

* * * * *

"And the Supreme Court has jurisdiction to issue a writ of mandamus only when necessary for the exercise of its powers as an appellate tribunal, and has no authority to require a bill of exceptions to be certified or the filing of a motion for a new trial to be noted, unless such acts are to be done in aid of an appeal which the law authorizes to be taken. (Section 1224, Burns Supp., 1921, Acts 1915, c. 87, p. 207; *Collins vs. Laybold*, 182 Ind., 126, 129; 104 N. E., 971.)"

In the following cases, the Federal Court of Appeals of Indiana adhered to the interpretation laid down by the Supreme Court of the same State in the cited cases:

In the case of *State ex rel. Green vs. Jeffries* (149 N. E., 873), the Federal Court of Appeals of Indiana said the following:

"A question having been raised as to the jurisdiction of this court over the subject-matter, that question will be considered first. This court has jurisdiction to issue writs of mandamus only in aid of its appellate powers and

functions. (Section 1224, Burns' 1921 [Acts 1915, p. 207, c. 87] ; State ex rel. vs. Cox, 193 Ind., 519; 141 N. E., 225.) If the relatrix were in a position to appeal from the action of the Vigo circuit court, should her appeal be to the Supreme Court or to this court? If to this court, we have jurisdiction to entertain her petition filed herein. If that appeal should be to the Supreme Court, we have no jurisdiction to act upon her petition, and it would be our duty to dismiss the petition for want of jurisdiction. If it were an appeal instead of an original action, and, if we had no jurisdiction, it would be our duty to transfer the appeal to the Supreme Court."

In the case of Frankel vs. Woodrough (7 Fed. [2d], 796, 797), the same Federal Court said:

"This character of action (an original writ) is somewhat unusual in Courts of Appeals and it is proper that this court examine its jurisdiction to entertain it. The purpose of the petition is to compel the determination of a criminal action against petitioner which, he avers, the trial court will not hear although it is its duty to do so. This jurisdiction of the Courts of Appeals is purely appellate and they have no original jurisdiction except such as is necessary to aid, protect or enforce their appellate jurisdiction. (Whitney vs. Dick, 202 U. S., 132; 26 S. Ct., 584; 50 Law. ed., 963; United States vs. Meyer, 235 U. S., 55; 35 S. Ct., 16; 59 Law. ed., 129.)"

The petitioners contend that the Court of Appeals has no original jurisdiction to take cognizance of the certiorari proceedings instituted by the respondents Villaroman and Cuevas because the decision to be rendered in the criminal case against the latter, if appealed, would have to be passed upon by the Supreme Court because of the death penalty which has to be imposed in view of the allegations of the information and the evidence presented. In opposition the respondents contend that the appeal which may be interposed should not be the basis in the determination of the original jurisdiction of the Court of Appeals to entertain the petition for certiorari, because if no appeal is taken from the decision to be rendered, there would be no way of determining if the Court of Appeals has original jurisdiction to act upon the certiorari proceedings. Following the ruling in the case of *Re Barber Asphalt Pav. Co.* (67 L. R. A., 761, 768, 769), cited in the memorandum of counsel for the respondents, we hold that the basis of the original jurisdiction of the Court of Appeals should not be the appeal which may be interposed in the criminal case against the respondents Villaroman and Cuevas, but the right to appeal. Otherwise stated, the original jurisdiction of the Court of Appeals to try and decide the petition for certiorari instituted by Villaroman and Cuevas should be determined by the existing right of appeal from the decision to be rendered in the criminal case and not by the contingency of whether or not such appeal will be taken.

Paragraph (4) of section 138 of the Administrative Code, as amended by section 2 of Commonwealth Act No. 3 and by section 3 of Commonwealth Act No. 259, reads:

"(4) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment, and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices, or accessories, or whether they have been tried jointly or separately."

In accordance with this provision, appeals from decisions in criminal cases imposing the penalties of death or reclusion perpetua and those taken from decisions in which, while lesser penalties have been imposed, the facts constituting the less grave offenses, however, arose out of the same occurrence as that giving rise to the more serious offense, correspond to the Supreme Court and appellate jurisdiction shall be exercised by the latter. Where a criminal case has not yet been decided, the bases in determining what court has original jurisdiction over a petition for certiorari founded upon questions arising from said criminal case, should be the penalty fixed by law for the offense charged in the information. Applying this criterion to the case at bar, it follows that the Court of Appeals has no original jurisdiction to pass upon the petition for certiorari filed by the respondents Villaroman and Cuevas, nor to issue the auxiliary writ of preliminary injunction issued by it, because in both cases the jurisdiction assumed by it was not in aid of its appellate jurisdiction, which it does not have for the following

reasons: First, because under paragraph (4) of section 138 of the Administrative Code, as amended, the appeal to be taken from any judgment of conviction which may be rendered in the criminal case would, in any event, correspond to the Supreme Court; and, secondly, because no decision having been rendered in the criminal case, the penalty imposable under the allegations of the information is the capital penalty, in which case the appellate jurisdiction would likewise be exercised by the Supreme Court.

The respondents Villaroman and Cuevas asked in their answer that this court pass upon the legality of the order issued by the petitioner judge in the aforesaid criminal case, cancelling the bonds put up by said respondents and ordering their rearrest. We hold that it is not in order to pass upon said question in this petition for prohibition not being necessarily included therein. For all that appears, the question was one of the grounds of the petition for certiorari filed by the said respondents, a petition which has to be dismissed because it was filed before an incompetent court.

The writ prayed for by the petitioners is granted; it is held that the Court of Appeals has no original jurisdiction to entertain a petition for certiorari filed before it by the respondents Villaroman and Cuevas, nor to issue the writ of preliminary injunction which it issued; the resolutions of the Court of Appeals holding that it has power and jurisdiction to take cognizance of the said petition for certiorari, are set aside; and the writ of preliminary injunction issued in this case is made permanent, with the costs to the respondents Pedro Villaroman and Diego Cuevas. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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