

NICOMEDES IBÑES ET AL., PLAINTIFFS AND APPELLEES, VS. THE ROMAN CATHOLIC APOSTOLIC CHURCH ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4695. December 12, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The history of the image of the Holy Child of Ternate (Santo Nino de Ternate), to which this case relates, is as follows:

After Kue-Sing, called by the Spaniards of the time a Chinese pirate, had driven the Dutch from Formosa in 1662, he sent an ambassador to Manila, demanding that the Philippines submit to his rule and become one of his tributary states. It was in the time of Don Sabiniano Manrique de Lara, governor and captain-general. Having refused to submit to the Chinese demand, the captain-general, in preparation for the threatened invasion, ordered the abandonment, not only of the posts held by the Spaniards at Zamboanga and other parts of Mindanao, but also of that of Ternate in the Moluccas, which had been taken by them in 1606 and held since that time. The garrison of Ternate, thus evacuated, came to Manila in 1663.

"The Mardicas (men of the sea), a race very friendly to the Spaniards, accompanied the latter to Manila, taking with them to their new country the Holy Child of Ternate, patron of their town, whose image they held in great veneration. Land was assigned to them in Maragondon, Province of Cavite, where they established the town of Ternate, the present inhabitants of which are the descendants of those loyal islanders." (Historia de Filipinas. Montero, Tomo I, p. 327).

In the Revista de Filipinas for the years 1875 and 1876 there appeared an article written on May 4, 1863, by one who then visited Ternate to inquire concerning the tradition there current relating to the image. One of the oldest inhabitants of the place, speaking to the author of the article, said:

"It is true, sir, that we originally came from a far distant country. When Don Sabiniano Manrique de Lara was governor of these Islands, about the year 1654, he learned that there was being prepared a great expedition in China, consisting of many ships and thousands of men for the conquest of the Philippines. He thereupon endeavored to gather together in Manila as many fighting men as possible to resist this powerful enemy and wrote to Ternate, in the Moluccas, from whence came our forefathers, that the few Spanish soldiers that were there should come to reenforce the troops in Manila. As soon as the plight of Manila was known, vessels were prepared, and the head of the expedition asked what Mardicas wished to go to the war. Our ancestors volunteered to the number of two hundred, and came with their Spanish missionary, a Franciscan, bringing the venerated image of the Holy Child that is the patron of our church. After their arrival there was no war, but many of our ancestors served on his majesty's ships; afterwards they were assigned land to live upon, which is now known as Bagumbayan. In the middle of the last century the government had the Mardicas come here in order to protect Maragondon from the continual attacks of the Moros, and since that time our forefathers and we have been established here. That is all I know of our predecessors."

Though this article lacks something of the seriousness of history, it agrees in the main with what appears from other sources, but, as will be seen hereafter, the Mardicas were established in Maragondon much earlier than the middle of the eighteenth century. Ternate was at that time a hamlet (barrio) of the town (pueblo) of Maragondon and is situated on the coast of the Province of Cavite, opposite the Island of Corregidor. It was later made a separate town.

Established there probably not later than 1700, nothing appears as to the Mardicas until 1740, when—

"His reverence, the provincial father, Fulcheiro de Spilimbergo, of this town and church of Maragondon, saw the book of elections of the prefect and other officials of this holy congregation or brotherhood of the holy name of Jesus of Ternate, and it appeared to him that not only should it be preserved and cherished with all care is one of the most tender and glorious memories of these Islands, glorious for its antiquity, since it dates its commencement from the founding of Christianity in this province by the preaching of the apostle San Francisco Xavier * * * most tender and devout; since in memory of those fervent Mardicas who, seeing themselves abandoned by the Spaniards in order to maintain their Christianity, with pious generosity abandoned their country, homes, and privileges, and came to these Islands in order to live in security in our holy Catholic faith, bringing with them their cherished image of the Holy Child Jesus as in triumph of their fidelity."

In the same year the Archbishop of Manila "conceded forty days' indulgence to those who should devotedly recite a Pater Noster, Ave Maria, before the holy image of the Most Holy Child Jesus of Ternate which is venerated in the parochial church of Maragondon."

In 1769 the Archbishop of Manila "concedes eighty days' indulgence to those who should devotedly recite a Pater Noster, Ave Maria, before the holy image of the Most Holy Child Jesus of Ternate, which is venerated in the parochial church of Maragondon."

It appears clearly from these documents that the image was in those days in the parish church of Maragondon and not in the hamlet of Ternate.

As has been seen from the declaration made by the father provincial, Fulcheiro de Spilimbergo, there then existed an organization called by him congregacion or hermandad, and later cofradia, which assumed certain duties or rights in connection with the image. One of the witnesses for the plaintiffs testified as follows in regard to the duties of the officers of the cofradia:

"Q. On entering upon their duties, what work and obligations devolve upon the hermano mayor, majordomo and secretary who represented the cofradia?—A. The hermano mayor is he who acts as president of the festivities on holidays, and solicits contributions from the public; the majordomo cares for and has the saint in his charge; it is the majordomo who takes the saint (to the church) before mass and afterwards brings it back.

"Q. And the secretary?—A. He keeps the papers of the alms of the saint."

There is no doubt that at least as late as 1803 the Santo Niño was kept in the parish church of Maragondon. There is some doubt as to the custom relating to the celebration of the festival of the saint with reference to the number of days during which it was exhibited in Ternate. The writer above referred to says:

"Every year, on the 31st of December, the day before the holiday, the Mardicas went to Maragondon to get their precious patron. The day following they took it out on the water, celebrating the most animated pilgrimage, with great shouting and war dances in the evening; afterwards they returned the patron to the church of that town which is about half a league away."

The hermano mayor of the cofradia in his petition of 1797 said :

"That it being the customo * * * the Mardicas who garrison the Barra of the said town of Maragondon to celebrate the day of the Circumcision of the Child God, whose image they took there on that day, assisted by innumerable devotees from various towns."

The parish priest of Maragondon, in his report of December 16, 1797, said:

"That it is very certain that in the place called Barra of this town there exists a hermitage, built of grass and bamboo, and to which, once a year, the image of the Holy Child of Ternate is taken, and * * * in the parish church, and is placed in said hermitage on the eve of its fiesta, so that the faithful may adore it. They bring the said image from the town two days before the holiday, which is the day of the circumcision, and afterwards take it back on the evening of the day before his anniversary, in order to celebrate the holiday in that parish, since it is not celebrated in the hermitage. Such is the custom of the Mardicas here who have charge of and care for the archicofradia of the Holy Child—"

and in another report of December 27, 1804, he stated—

"At the time I commenced to be curate thereof, I found a cofradia of the Holy Child, cared for and managed by the Mardicas who reside there * * * of this town, which image is in charge of and placed in the side altar of the church; by a custom which dates from their origin, they celebrate the fiesta in this church on the day of the circumcision with such circumstance that, in order to celebrate it, they first take it from here and carry it hidden to the place called Barra and place it in the hermitage there on the eve of the fiesta, so that the faithful who attend may adore it; on the evening of the same day they publicly return it to this town, and proceed with the celebration of the fiesta."

Whatever may have been the custom prior to November 30, 1803, by the decree of that date made by the court of the vicar general (juzgado provisorial) permission was granted to the Mardicas to have the image exposed in the chapel of their barrio for the first five days of January, upon certain conditions, the sixth of which was as follows:

"Sixth. That the chapel shall always be closed at the termination of services when the Holy Child is not there, because it has to be returned to the church. At the termination of the holidays, one or two deputies are to be assigned to care for it, and to insure that there be not the least irreverence or profanation in such a holy place."

The festival for that year was apparently so celebrated, but as the one for the next year approached, the parish priest of Maragondon and the inhabitants of the pueblo procured an order from the ecclesiastical authorities giving to the priest the right to suspend for that year the celebration in the barrio.

This he did. What took place when he made the announcement is best described in his own words when he reported the affair to the archbishop:

"ILLUSTRIOUS AND MOST REVEREND SIR: I can do no less than acquaint you with what has happened in this town. Having received your decision on the consultation made with respect to the celebration of the fiesta of the new year, I made it known to the principales of the town and the Mardicas hermanos de la cofradia. I asked them where they wished to celebrate the fiesta and they replied that it should be as ordered. I was of the opinion that it would be better to hold it in the town as being more decent and commodious for the purpose, and also for the sake of ancient custom, and I decided in view of the said instructions that the fiesta should be celebrated there. They all appeared to be agreeable, and without any dissensions on either side, as were also the people and the Mardicas of the said cofradia. On the eve of the fiesta all was in readiness and vespers were about to be sung, when suddenly and without leave, there entered the church a number of Mardicas, provided with lances and other arms drawn from their scabbards, who drove the congregation from the church. They then ascended the altar, without any respect or fear of the Lord, and took away the Child with them to celebrate their fiesta.

"All present were startled at the occurrence and were greatly frightened, especially the women and children,

who screamed. We were all astonished and confused at such a rare occurrence and when I was told of the affair I ran to the choir to listen, but on arrival I found that they were already carrying off the Chfid Jesus in great haste. Thank God, however, that no other accident occurred, as the peor pie did not know of the affair until after it was over, and consequently offered no resistance."

The views of the Mardicas were expressed in the report which their hermano mayor made of the occurrence to the archbishop. He said, among other things:

"The parish priest and the inhabitants of the town have always been opposed to the desires of the hermanos of said holy congregation. Their object is none other than to deprive the Mardicas of their right of preference to celebrate the fiesta in the hermitage erected in said barrio. The priest was influenced by the gifts of candles contributed by the faithful devotees of other districts and provinces and of those of the town interested in gambling in their houses and fattening their purses. Thus the poor Mardicas suffered from the persecution of the said priest and those of the town for this cause. * * * The priest, carrying out his ideas * * * called the hermanos de la cofradia: He said that he was in receipt of an order communicated by Your Grace's secretary to alter the provisions of the said decree. The hermanos were surprised at the news, and seeing that in the evening of that day the vespers had to be held, they did not know what to do, as the priest said that the image of the Holy Child could only be taken to its hermitage before twelve o'clock, but at four o'clock it had to be returned to the church for vespers. In a respectful manner the hermanos represented to the priest that the hermitage was already decorated in anticipation of the celebration of high mass, the priest of San Roque having been called upon for the purpose and to preach. They received no consolation in their affliction, however, as the priest remained firm. The faithful devotees were in equal confusion, as all went to the hermitage, where last year the fiesta was held, and met with this unlooked-for result. Some remained while others returned home, as nobody gave the true explanation of the affair. The Mardicas, men and women, wept in the streets for their misfortune, clamoring at the top of their voices for the divine image, through whose intervention God had so often saved them from the hand of impious Moros. To such a degree did the sentiments of the unfortunate people attain, that some young men, doubtless induced by their fervent devotion to the divine image, that evening went to get it, and bring it to the hermitage; in order to avoid recognition they hid themselves from the elder folk, and particularly from the hermanos de la cofradia, who afterwards essayed to return the image to the church. Truly, only men that were blind with love and devotion such as they possess for their Divine Patron would undertake such a venture, as they risked their lives by a bloody opposition of the entire town of Maragondon. At tremendous risk, those youths, who it is said did not number more than seven, forgot their parents and their lives, merely to go and fetch the divine image and take it to its hermitage. They entered the church, not with the intention to give offense, but to suffer, and so it would seem that their action might be forgiven them, taking into account the reason for its commission."

The order which gave the priest the right to suspend the decree of November 30, 1803, for the year 1804 only, provided that as to the future further action would be taken by the ecclesiastical authorities. The matter was referred to the assessor, who reported in favor of the Mardicas, advising the archbishop to order that "the custom be followed in the celebration of the fiesta by the aforesaid Mardicas, the latter to conform to the orders given by the ecclesiastical judges on the said date of November 30, whose chapters they must observe." Such an order was made by the archbishop on March 6, 1805, and the promotor fiscal, on the 26th of March of the same year, gave an opinion to the same effect.

It appears from the record that the matter really in dispute was not as to whether the Mardicas were entitled to the permanent possession of the image, but as to whether the festival should be celebrated in the barrio or in the pueblo, and this question was decided in favor of the barrio. For it will be observed that the final judgment directed that the provisions of the decree of November 30, 1803, be observed, among which was the sixth condition, above quoted, by which the Mardicas were required to return the image to the church of Maragondon.

From that time more than fifty years passed, as to which period the record contains no written evidence. Where

the image was during that time, does not appear. Witnesses in the case, whose memory goes back to about 1855, say that, since their recollection, the image was not then in the church of Maragondon, but was kept in a box in a private house in the barrio by the majordomo of the cofradia, and that every Friday it was taken to the chapel, where it was worshipped.

About 1863 a church was built in Ternate and the image was immediately located therein, where it remained until 1896. At the outbreak in Cavite of the rebellion against Spain of that year, the parish priest, a native of the Islands, fled to the mountains and from that retreat ordered the president of the pueblo of Ternate to take the image from the church and bring it to the mountains. This was done and it there remained until the amnesty of 1897, when it was returned to the church of Ternate. It there remained until 1903, when a party of men, among whom were some of the plaintiffs, entered the church during the absence of the priest, seized the image, carried it out and placed it in a chapel of the Independent Filipino Church in the same pueblo of Ternate. Under orders of the executive branch of the Government it was taken therefrom by a military force of scouts, placed in the church of Maragondon, and the persons taking it from the church of Ternate were prosecuted for robbery. That case was dismissed, and the image ordered to remain in the custody of the Roman Catholic priest of Maragondon in the church of that pueblo until the right thereto could be determined in a civil judicial proceeding. Thereupon this action was brought.

The plaintiffs are thirteen in number. The complaint begins as follows:

"United States of America, Philippine Islands, in the Court of First Instance of Cavite.—No.—— —Nicomedes Ibañes, Bernardo Ramos, Pedro Zapanta, Pelagio Ninon, Andres Ninon, Victoriano Ramos, Hermenegildo Dinglay, Damaso Hernandez, Ciriaco Ramos, Cenon Zapanta, Baldomero Dionis, Rafael Ramos, Raymundo Salcedo, for themselves and in the name of the other inhabitants of the town of Ternate, plaintiffs, vs. the Roman Catholic Apostolic Church and its representative, the parish priest of Naic, Valentin Velasco, defendants, for the proprietorship of an image of the Holy Child.

"The plaintiffs as expressed above, as inhabitants of the town of Ternate, for themselves and in the name of all the other inhabitants of said town, appear before the court and bring complaint against the defendants, alleging as a cause of action that:"

* * * * *

There are no other allegations in the complaint as to the right of the plaintiffs to represent the inhabitants of Ternate, nor is there any proof whatever in the case upon this point. The claim of the plaintiffs is that the persons who were at the time of the presentation of the complaint the inhabitants of Ternate were the owners in common of the image considered as a piece of personal property. There is no evidence to show that the present plaintiffs, or any one of the present inhabitants of Ternate, were the heirs or in any way related to any one of the two hundred Mardicas who came to the Philippines nearly two hundred and fifty years ago. The claim of the plaintiffs is apparently not rested upon the proposition that they are entitled to relief because they are such heirs, but because they live in the pueblo. Their view seems to be that the heirs of the Mardicas living in other pueblos have no interest in the image.

Nor is there any evidence in the case to show how many, if any, of the plaintiffs or of the present inhabitants of Ternate, who are some 2,460 people, belong to the Roman Catholic Church. It will have been observed that, when the Mardicas came here, there came with them a priest of the Roman Catholic Church; that the image has always been used in connection with the worship of the religion professed by that church that the cofradia was an organization of that church, and by the terms of the decree of November 30, 1803, necessarily had to have as its rector a priest of that religion; that the disposition of the image has always been at the charge of the church's officers, and that recourse has always been had to them to determine any rights relating thereto.

Passing the question as to whether the Roman Catholic Church is not the owner of the image, the question may be asked, whether under these circumstances it can be said that any one has a proprietary right in this image who is not a Roman Catholic? If among the Mardicas who first came here there had been one who did not profess that religion, would he have had any participation therein? Are the Chinese who now live in Ternate part owners of the image? These are questions which we do not feel called upon to decide, for the case must be resolved upon the point made by the defendant at the very commencement of the action, to wit, that the thirteen persons named as plaintiffs have no right to maintain it.

The plaintiffs rely upon article 118 of the Code of Civil Procedure, which is as follows:

"When the subject-matter of the controversy is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. But in such case any party in interest shall have a right to intervene in protection of his individual interests, and the court shall make sure that the parties actually before it are sufficiently numerous and representative so that all interests concerned are fully protected."

No case has been called to our attention in which this section or the rule which it enunciates has been applied where the ownership of personal property is involved and where it is claimed to belong to persons who at a particular time reside in a particular place, or where the ownership changes as persons move in or out of such locality.

In the case of *Macon & Birmingham Railroad vs. Gibson* (85 Ga., 1; s. c. 21 Am. St., 135), it appeared that the railroad, in accordance with the terms of its charter, if it built its railroad within 5 miles, of the town of Thomaston, had to build it within the corporate limits, or within 1 mile of the court-house. It was there held that two citizens of the town had a right to maintain a suit in behalf of themselves and of their fellow citizens, to prevent the railroad from violating its charter. The court said that the object of the provision in the charter was to prevent the decline and decay of the town in consequence of having a railroad in the vicinity but not near enough to prevent some rival town from springing up, and that the citizens of Thomaston had a peculiar and vital interest therein. It will be seen that in this case the ownership of personal property was not involved.

The case of *Wheelock vs. First Presbyterian Church* (119 Cal., 477), did involve the ownership of certain property and two persons were allowed to bring the action in behalf of others, but it there appeared that the persons who belonged to the Central Presbyterian Church, and whom the two plaintiffs represented, numbered 369 and were well known. In other words, that they were the members of a well-defined unincorporated society. The case of *Smith vs. Swarmstedt* (16 How., 288), involved the division of the Methodist Church of the United States into two bodies, Methodist Church North and Methodist Church South. The matter in controversy was a property known as The Book Concern. The only persons interested in this property were the preachers belonging to the two churches, of whom there were about 1,500 in the Church South and about 3,800 in the Church North. These persons were well known and could be identified, and six of the preachers belonging to the Church South were allowed to maintain the action for themselves and for all their fellow preachers in that body. It will be seen that no one of these three cases is like the present one, wherein no one of the inhabitants of Ternate has a vested interest in the property in question which would survive his removal from the town and in which another person, by moving into the town, acquired an interest.

But even if this section were applicable to such a case as the present, the action could not be maintained. In the case of *Smith vs. Swarmstedt*, above cited, the court said, at page 303:

"In all cases where exceptions to the general rule are allowed, and a few are permitted to sue and defend on behalf of the many, by representation, care must be taken that persons are brought on the record fairly representing the interest or right involved, so that it may be fully and honestly tried."

In *Macon & Birmingham Railroad vs. Gibson*, above cited, the court said:

"It is true that as only two of the citizens have become parties, it is rather a small representation of the whole community; but considering the publicity of the case and of the interest involved in it, and the fact that the suit is located in Upson County and will be tried (if tried at all) at the county town, which is the town whose citizens are interested, there can be no cause to apprehend that the two plaintiffs on the face of the petition will be disposed, or if so disposed, allowed to misrepresent the community in whose behalf they have brought this suit. No doubt it is somewhat discretionary with a court of equity as to how many representatives of a class will, or ought to be, regarded as a fair representation of the whole class in the given instance."

It sufficiently appears from the record in this case that it is a controversy between the Roman Catholic Church on one side and the Independent Filipino Church on the other. That it is the purpose of the plaintiffs, if they secure possession of the image, to place it in the chapel of the Independent Church is also very clear. What number of the inhabitants of the town (2,460 according to the census) are members of the Roman Catholic Church and what part are members of the Independent Filipino Church does not appear. But it is very apparent that many of the inhabitants are opposed to the transfer of the image from the Roman Catholic Church. Under the circumstances, the thirteen plaintiffs do not fairly represent all of the inhabitants of the town. Their interest and the interests of some of the others are diametrically opposed. For this reason this action can not be maintained.

The judgment of the court below is reversed, and the defendants are acquitted of the complaint, with the costs of the first instance against the plaintiffs. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

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