

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LIM KEE SIU, DEFENDANT AND APPELLANT.***G.R. No. 47946. December 28, 1942*

Ponente: BOCOBO, J.

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Lim Kee Siu, appellant herein, was accused of theft in the municipal court of the City of Iloilo on August 22, 1940, the information having been signed and sworn to by Sofronio I. Dagnay, assistant city attorney, before Acting Municipal Judge Jose Vicente Mapa. On the same day, an order of arrest was issued by the same judge. Trial was held on October 11, 1940, before Auxiliary Municipal Judge Gregorio Jalbuena because the regular incumbent, Judge Jose Vicente Mapa, was on leave. The latter returned to duty on October 16, 1940. But the next day, October 17, 1940, decision was rendered and signed by Auxiliary Judge Gregorio Jalbuena, sentencing the accused to 4 months and 1 day of *arresto mayor*, to the accessory penalties and to pay the costs. On October 18, 1940, a *subpœna* was issued requiring the accused to appear on October 29, 1940, to be informed of the decision. However, on that day, on motion of the attorney for the accused, Judge Jose Vicente Mapa, the regular incumbent, declared the decision of the auxiliary judge, dated October 17, 1940, invalid because the regular incumbent had returned to duty the day before, October 16, 1940. Upon appeal by the city attorney, the Court of First Instance on November 22, 1940, reversed and set aside the order of Judge Jose Vicente Mapa, and the case was remanded with instructions that the decision of Judge Gregorio Jalbuena of October 17, 1940, be promulgated.

Section 56, paragraph 1 of the Charter of the City of Iloilo (Commonwealth Act No. 158) provides:

"The auxiliary municipal judge shall act as judge in case of the absence, incapacity or dis-qualification of the municipal judge until the latter's return to duty or until another municipal judge shall have been appointed and qualified. While so acting, the auxiliary municipal judge shall have the same powers, emoluments, and privileges as the regular incumbent of the office, * * *."

The question is, After the return of the regular incumbent, did the auxiliary judge retain his power to decide the case which he, the latter, had tried while the former was on leave? We hold that the auxiliary judge did retain such power, for these reasons:

- It is an established principle that a judge having obtained jurisdiction retains it till the final disposition of the cause. (15 C. J., 825; 14 A. J., 370.) The right to render judgment is a necessary consequence of the power to hear and try a case. This rule is founded upon sound public policy, because otherwise, confusion and inconvenience in the administration of justice would arise. It goes without saying that the judge who has tried a case is in a better position to render a correct judgment.

- The municipal court of the City of Iloilo is not a court of record. In this case, the regular incumbent who did not hear the evidence, would, in order to render a decision, either have to rely on information from the auxiliary judge or hold an entirely new trial. One course would be unsatisfactory, and the other unnecessary. Information from the auxiliary judge would be unsatisfactory because he could not make an exact reproduction of the words of the

witnesses, of their mode of testifying, and other incidents of the trial which may be of importance in arriving at a just conclusion. A trial de novo would mean unnecessary trouble and expense both to the government and to the accused. Such a new trial could not have been contemplated by the lawmaker.

- The evident purpose of providing for an auxiliary judge in the municipal court of Iloilo was that he should help and assist the regular incumbent. But the theory of appellant's counsel would seriously reduce the usefulness of the auxiliary judge because many trials—such as that held in this case—would become worthless. Defeating the primary objective of a law is tantamount to judicial legislation.

- The appointment of Gregorio Jalbuena as auxiliary judge of the municipal court of the City of Iloilo was in full force and effect when he rendered the decision on October 17, 1940. This case should, therefore, be distinguished from a case where the judge's appointment has been disapproved (*People vs. Tolentino*, G. R. No. 46325, December 24, 1938). In such instance, the person attempting to render judgment has been divested of all judicial authority, and has to all intents and purposes become a private citizen.

Therefore, the judgment of the Court of First Instance is hereby affirmed, with costs against the appellant. So ordered.

Yulo, C. J., Paras and Imperial, JJ., concur.

Moran, J., concurs in the result.

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