

MGR. J. J. CARROLL, BISHOP OF THE ROMAN CATHOLIC APOSTOLIC CHURCH, AND JUAN BALLESTEROS, PLAINTIFFS, VS. THE HON. ISIDRO PAREDES, DEFENDANT.

G.R. No. 6000. September 26, 1910

Ponente: TRENT, J.

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TRENT, J.:

A criminal complaint the municipal president in the justice of the peace court of the town of Tayug, Province of Pangasinan,. against Juan Ballesteros, parochial priest of the Roman Catholic church, in which it was alleged that the said Ballesteros closed the public street or road which runs in front of the church by placing gates where the said road enters and leaves the atrio. The accused was arraigned on the same date and plead not guilty.

After the termination of the trial, the justice of the peace found the accused guilty as charged, and on the 7th of December, 1909, sentenced him to thirty days' imprisonment at hard labor in the municipal jail, and to pay a fine of P50 and the costs. He was further sentenced to remove the gates which he had erected at the said places.

The accused appealed to the Court of First Instance, where he was again tried on the same charge, found guilty and sentenced on the 25th of February, 1910, to pay a fine of P25, to remove the said gates, and to pay the costs of the cause. Subsequently thereto, and on the 29th of March, 1910, Mgr. J. J. Carroll, Bishop of the Apostolic Roman Catholic Church, a unipersonal corporation, and the said Juan Ballesteros, as plaintiffs, instituted this action in this Supreme Court against the Honorable Isidro Paredes, judge of the Court of First Instance of the Province of Pangasinan, by filing a complaint in which they set up the said trials in the justice of the peace court and the Court of First Instance, and alleged that the defendant judge exceeded his jurisdiction in directing in his sentence that the said Juan Ballesteros remove the gates heretofore mentioned, for the reason that the said gates were placed on the property of the Roman Catholic Church and not upon a public highway, and that under the law the said Ballesteros could not appeal to this court; and there existing no other speedy and adequate remedy they therefore prayed that a preliminary injunction be issued out of this court, directed to the defendant judge, restraining him from carrying into effect that part of the said sentence which refers to the removal of the said gates; that upon hearing a writ of certiorari be issued, directing the record to be forwarded to this court for review, and after review of the same that judgment be rendered declaring that that part of the said sentence is null and void. The proper bond having been filed and approved, the vacation justice issued, on the same day, March 29, 1910, the preliminary injunction prayed for.

The record having been forwarded to this court in accordance with the law and the procedure in such cases, and the parties having been heard through their respective counsel, the case was submitted for final determination.

Counsel for the plaintiffs insist: First, that inasmuch as the question of title to real property was involved in the trial of this case before the justice of the peace, the said justice of the peace exceeded his jurisdiction proceeding with said trial and pronouncing judgment in the same; second, that as the justice of the peace had no jurisdiction to convict the defendant, Ballesteros, the Court of First Instance, on appeal, was without jurisdiction to try the

case upon its merits; and, third, that if the Court of First Instance did acquire jurisdiction to try the case upon its merits, it exceeded its jurisdiction in condemning the said Ballesteros. to remove the gates in question.

The Attorney-General, representing the defendant judge, is of the opinion that both the justice of the peace and the Court of First Instance had jurisdiction to determine the guilt of the accused and to impose the penalties complained of, including an order to remove the gates, inasmuch as the said Ballesteros closed or obstructed a public highway, it having been established that the said gates were placed across a street or highway in violation of law.

The validity of that part of the penalty of the defendant judge which refers to the fine imposed is not before us.

The ownership of the land where the said Juan Ballesteros placed the gates can not be determined at this time, but it is necessary to inquire whether or not the title to real property was involved in order to determine the jurisdiction, of the justice of the peace to convict the accused, Ballesteros.

The accused, Juan Ballesteros, testified in the justice of the peace court that before the 29th of September, 1909, the date on which the gates were erected, no one interfered with the free passage of vehicles, carts, and the public generally; but on being asked to whom that real property belonged he replied that it was the property of the Church; that he knew that the same was the property of the Church for the reason that the same was surrounded by a wall about one meter high, which wall inclosed the atrio of the church, and that this Supreme Court having finally determined that the church building, convent, and atrio are the property of the Roman Catholic Church, and he, Juan Ballesteros, having received instructions from the Bishop, erected the gates at those places, believing that he had authority to do so. This witness explained that at the places where the said gates were erected the walls had been torn down by usage almost level with the ground, and that it was at these two low places that the gates were erected. While this witness, Juan Ballesteros, admitted that the public passed freely to and fro through this passageway before the gates were erected, he did not concede or admit that the said land was public property, but strongly insisted that the same was the private property of the Church, basing this contention on the decision of this court and on the fact that the said property was inclosed by walls placed there by the Church.

According to a plan or rough draft of the premises, which is admitted by both the plaintiffs and the defendant to be substantially correct, it appears that the atrio which, according to Juan Ballesteros, is inclosed by a wall, is just in front of the main entrance to the church on the south and joins the Church property. The road claimed to be a public highway by the defendant judge, and across which the gates were placed, passes entirely across the southern end of the said church, just in front of the main entrance, and according to this plan the said alleged public highway is about the same distance from the main entrance to the church as the said highway is wide.

The justice of the peace in his decision stated that the defense of the accused, Ballesteros, was that he was directed to place the gates there by his superior, the Bishop of Vigan. The justice of the peace in the same sentence found that the said real property belonged to the public and was under the exclusive control of the municipality, and further found that the public had acquired the same by prescription.

So it is clear from this record that a real question was raised in the justice of the peace court as to the ownership of this land. This was the real defense of the defendant. He did not deny having placed the gates there, but stated that he did so, believing that he was placing them upon the Church property. A mere allegation of ownership is not sufficient to oust a justice of the peace of jurisdiction, but when it develops during the trial from the proofs that the title to real property is necessarily involved as in this case, then the justice of the peace loses jurisdiction to try and determine the action.

"A justice of the peace shall have no jurisdiction to adjudicate questions of title to real estate or any interest therein, and whenever a case requiring such adjudication is brought before him it shall be his duty, upon

discovering the same, to suspend further proceedings therein and certify the cause forthwith to the Court of First Instance * * *." (Sec. 3, Act No. 1627.)

A justice of the peace has no jurisdiction to deprive a man of his real property by determining the title to the same. For better reasons he should not have jurisdiction to deprive a man of his liberty when, in order to do so, it is necessary for him to first determine the title to real property.

In the case at bar the justice of the peace had jurisdiction when the proceedings started in his court, but during the trial of the same he lost jurisdiction when the question of title to real property arose. He was then as completely without jurisdiction to proceed as if he had never acquired same. So the judgment rendered by the justice of the peace in this case was null and void for want of jurisdiction of the subject matter.

The defendant, Ballesteros, appealed to the Court of First Instance. The law governing appeals in criminal cases is as follows:

"* * * The convicted party may appeal from any final judgment of a justice of the peace in a criminal cause to the Court of First Instance by filing a notice of appeal with such justice within fifteen days after the entry of judgment. * * *." (Sec. 34, Act No. 1627.)

"All cases appealed from a justice's court shall be tried in all respects anew in the court to which the same are appealed; but on the hearing of such appeals it shall not be necessary, unless the appeal shall involve the constitutionality or legality of a statute, that a written record of the proceedings be kept; but shall be sufficient if the appellate court keeps a docket of the proceedings in the form prescribed in the next preceding section." (Sec. 54, General Orders, No. 58.)

An appeal will not lie to the Supreme Court from a judgment of the Court of First Instance, tried on appeal, when the justice of the peace had jurisdiction, except in cases involving the validity or constitutionality of a statute or municipal ordinance. (Sec. 16 of Act No. 1627.)

Courts of First Instance have both original and appellate jurisdiction. They have jurisdiction of the person and of the subject matter in all cases on appeal from justices of the peace when properly brought before them. Appealed criminal cases "shall be tried in all respects anew." De novo, over again. The nature of the action can not be changed in the Court of First Instance, but must be tried de novo upon its merits on the same process and pleadings; that is, the process and pleadings must be of the same nature as those in the justice of the peace court. The prosecuting officer, however, can substitute his own complaint for that filed in the justice of the peace court, provided the nature of the action is not changed. In this jurisdiction no provision is made for an appeal from justice of the peace courts upon the law only, but all appeals are taken for a new trial, and the defendant is entitled to interpose the same objections as he could have interposed in the justice of the peace courts.

If the sentence imposed upon him by the justice of the peace is void for want of jurisdiction of the subject matter, the defendant, on appeal, has a right to have the appellate court so determine, or he may elect to have the Court of First Instance try the case upon its merits, without raising the question of the jurisdiction of the justice of the peace. If he raises no objection with reference to the jurisdiction of the justice of the peace and submits himself to be retried for the crime for which he was charged, then he will be presumed to have waived all questions as to jurisdiction, and he can not thereafter raise this question of jurisdiction, provided the appellate court had jurisdiction of his person and the subject matter. But should he make a timely objection in the appellate court as to the want or excess of jurisdiction of the justice of the peace, and should the court find such objection well founded, then it acquires jurisdiction only for the purpose of dismissing the same, without prejudice, however, to the institution of a new proceeding for the same criminal acts in the proper tribunal. But in order to take advantage of these rights the appellant must by proper objection call the attention of the court to these facts and give the

court an opportunity to pass upon the validity of such sentence; otherwise he will be, as we have said, presumed to have waived the question of jurisdiction. No agreement of the parties, or waiver of objection, can confer jurisdiction on an appellate court which has no jurisdiction of the subject matter. But in the case at bar the Court of First Instance had jurisdiction, both of the person and of the subject matter.

In 24 Cyc, 641, it is said:

"On appeal from a justice of the peace, the appellate court has only such jurisdiction as the justice had, and if he had no jurisdiction, the appellate court acquires none; and it is immaterial that such court has original jurisdiction of the subject matter of the action."

A number of cases from various States in the American Union are cited in support of this proposition. It must be noted that this rule is based upon the theory that the appellate court had jurisdiction of the subject matter of the action.

On page 643 of the same volume (24 Cyc.) it is said:

"While it has been held that, where the justice of the peace had no jurisdiction of the subject matter of an action, the parties can not confer jurisdiction on the appellate court by consent, the better view seems to be that where the appellate court has original as well as appellate jurisdiction of the cause, jurisdiction of both the subject matter and the person may be conferred upon it by waiver or consent. (Citing cases from Alabama, Colorado, Indiana, Iowa, Kentucky, Michigan, Minnesota, and Ohio.)

"The question of want of jurisdiction may be raised by motion to dismiss the proceedings, or by objecting at the trial to the introduction of any evidence on behalf of plaintiff." (Id.)

These propositions are applicable alike to both criminal and civil cases.

In the case at bar the accused, Ballesteros, made no objection whatever in the Court of First Instance to the trial being had upon its merits. He did not in any way call the attention of the Court of First Instance to the fact that the sentence imposed upon him by the justice of the peace was void for want of jurisdiction. We, therefore, conclude that he waived these questions and submitted himself to be retried for the crime charged upon the merits of the case.

That part of the sentence imposing a fine and costs upon Ballesteros is not questioned, but the validity of that part of the said sentence wherein Ballesteros was sentenced to remove the gates is before us for determination.

The law which gave the Court of First Instance jurisdiction of the subject matter is found in section 16 of Act No. 1511, which provides as follows:

"It shall be unlawful for any person to convert any part of any public highway, bridge, wharf, or trail to his own private use, or to obstruct or damage the same in any manner, or to remove any tool or road making material therefrom, or to mutilate, damage, destroy, or in any manner interfere with any public bridge, culvert, or drainage canal, or to use any public ditch for irrigation or other private purposes, and any person so offending shall be punished by a fine of not more than one hundred pesos, or by imprisonment at hard labor not exceeding three months, or by both such fine and imprisonment, in the discretion of the court. The provisions of this section shall likewise be applicable to highways, bridges, wharves, and trails in provinces organized under Act Numbered Thirteen hundred and ninety-six, notwithstanding the limitations contained in sections one to six of this Act."

Nothing is said in this section, nor anywhere else in the Act, about the removal of the obstructions. Our attention has not been called to any other provision of law on this subject, except paragraph 6 of article 584 of the Penal Code, which provides that -

"Those who shall obstruct the sidewalks, streets, and public places by their acts or with wares of any kind shall be punished with the penalty of a fine of from fifteen to one hundred and twenty-five pesetas or censure."

The above article of the Penal Code makes no provision for the removal of the obstruction.

The crimes defined and punished by section 16 of Act No. 1511, *supra*, are known in American jurisprudence as "public nuisances." A public nuisance is a common law offense, and its creation or maintenance is, in the United States, an indictable offense, both at common law and under the statutes of the various States (29 Cyc, 1278). In the various States there are found numerous statutes providing for the punishment or the imposition of penalties on persons creating or maintaining: nuisances, which do not, however, supersede the common law, where they do not attempt to cover all cases of public nuisances. Such statutes are construed according to the general rules for the construction of. penal statutes, (29 Cyc, 1279, and cases cited.)

Notwithstanding the fact that section 16 of Act No. 1511, *supra*, makes no provision for the removal of obstructions, the Attorney-General insists that the Court of First Instance had jurisdiction to condemn the defendant, Ballesteros, to remove the gates in question in this case. In support of this proposition he calls the court's attention to the cases of *Barclay vs. Commonwealth* (25 Pa. St., 503), *Wetmore vs. Tracy* (14 Wend., 250), *Lancaster Turnpike Co., vs. Rogers* (2 Pa. St., 114), and sections 828 and 829 of Bishop's *Work on Criminal Law*, eighth edition.

The case of *Barclay vs. Commonwealth*, *supra*, is based on Taggart's case (21 Pa. St., 527). In this latter case the charge on which the defendant was convicted was based on the common-law offense, "a nuisance in the King's highway," The defendant was sentenced to abate the nuisance at his own costs. The court said, among other things, that -

"Where the indictment is at common law, as this was, we know of no decision that such a sentence is illegal."

That part of section 828 of Bishop's *New Criminal Law*, *supra*, which refers to the abatement of nuisances, says:

"Whenever a subject of property, whether through its owner's fault or not, is in a situation to be a nuisance, it is not strictly forfeited, but the nuisance may be abated, to the destruction, if necessary, of the property."

Under No. 2 of section 821 of this same work on criminal law several cases are cited in support of this doctrine, one of which is the case of *Lancaster vs. Rogers*, *supra*. On examination of these cases, as well as those cited by the Attorney-General, *supra*, it will be seen that they were either based on the common law, or on statutes which did not exclude the common-law remedies.

Some of the courts in the United States hold that the right to abate a public nuisance is not affected by statutes imposing a penalty for the offense, unless the negative words are used, evincing an intent to exclude the common-law remedies (29 Cyc., 1279). That is, where the statute makes a public nuisance a crime or misdemeanor, providing a penalty for the violation of the same, but makes no provision for the abatement or removal of the obstruction, and where the wording of the statute does not clearly show that it was the intention to exclude the common-law remedies, one of which is the removal of the obstruction, then such common law remedies can be applied, upon the theory that the common law is in force in the United States.

"But neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles, applicable to local conditions, and are not in conflict with existing law; * * *" (*U. S. vs. Cuna*, 12 Phil. Rep., 241.)

Articles 1 and 21 of the Penal Code are as follows:

"Art. 1. Crimes or misdemeanors are voluntary acts or omissions punished by law.

"Art. 21. No crime or misdemeanor shall be punished by a penalty which was not established by law prior to its commission."

So to hold that the common-law remedies in cases of public nuisances apply in this country would be contrary to these express provisions. The civil law is in force in this jurisdiction and all penalties imposed for crimes or misdemeanors must be provided for by statute, and a penalty which is not so provided is without the jurisdiction of the courts and null and void.

In the case at bar the Court of First Instance sentenced the defendant, Ballesteros, to remove the gates in question, thereby imposing a penalty which was unauthorized by statute. Should an attempt have been made to execute this part of the sentence and should Ballesteros have refused to remove the gates, and should the court have imprisoned him until he complied with that part of the sentence, such imprisonment would have been illegal. The said defendant. was without jurisdiction to condemn the said Ballesteros to remove the gates in question, and that part of the is null and void.

A party entitled to appeal, or to pursue some other remedy, who has lost the right, through inadvertence, accident or mistake, may have a remedy by certiorari, on a showing of probable merits and freedom from fault. (6 Cyc, 763, and cases from Alabama, Arkansas, District of Columbia, Mississippi, North Carolina, Oregon, and Tennessee.)

In the case at bar Ballesteros could have appealed to this court from the decision of the Court of First Instance, as the justice of the peace had no jurisdiction to try the case and impose the penalties, but his failure to appeal was not through any neglect or fault of his, as he honestly believed that in view of the provisions of section 16 of Act No. 1627, supra, he could not appeal. Under these circumstances he is clearly entitled to the remedy of certiorari.

So we conclude:

- That a justice of the peace has no jurisdiction to try and determine any case, either criminal or civil, where the title to real property is necessarily involved, and when such a case comes before him he should immediately certify it to the Court of First Instance;
- That in a criminal case where a justice of the peace renders a judgment wherein he does not have jurisdiction of the person of the defendant and the subject matter of the action, and an appeal is taken to the Court of First Instance, and no objection is interposed in the said Court of First Instance as to the jurisdiction of the justice of the peace, then the defendant will be presumed to have waived all objections to such jurisdiction and the case can be tried upon its merits; provided, however, that the nature of the action is not changed and that the said Court of First Instance had jurisdiction of the subject matter of the action; but when a timely objection is made to the jurisdiction of the appellate court (Court of First Instance) to try such case on its merits, the said court only acquires jurisdiction to dismiss the case; and,
- That under existing law the courts have no jurisdiction to impose, as a part of the penalty in a criminal action, a sentence condemning the defendant to abate the nuisance when convicted for having violated the provisions of Act No. 1511.

Let judgment be entered declaring that part of the sentence imposed upon the said Ballesteros, condemning him to remove the gates in question, null and void, and that the preliminary injunction heretofore issued be made perpetual, without any special ruling as to costs. So ordered.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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