

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. CAYETANO RAMAYRAT, DEFENDANT AND APPELLEE.

G.R. No. 6874. March 08, 1912

Ponente: MAPA, J.

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MAPA, J.:

On the 8th of February, 1911, the provincial fiscal of Misamis, Agusan, and Surigao presented against the defendant a complaint of the following purport:

"The undersigned charges Cayetano Ramayrat with the crime of gross disobedience to the authorities, committed as follows:

"That, on February 1, 1910, one Sabino Vayson filed suit against Cayetano Ramayrat, in the justice of the peace court of Misamis (Exhibit A), for the recovery of possession of a parcel of land belonging to the said Sabino Vayson; that, on March 9, 1910, the said justice of the peace court rendered judgment by sentencing the said Cayetano Ramayrat to deliver the possession of the said land to the plaintiff, Sabino Vayson (Exhibit B); that, when Cosme Nonby, the deputy sheriff of the municipality of Misamis, demanded of the defendant, Cayetano Ramayrat, on April 29, 1910, in this municipality of Misamis, Province of Misamis, within the jurisdiction of this court, that he deliver the said land to the plaintiff, Sabino Vayson, the said defendant, Cayetano Ramayrat, voluntarily, unlawfully and criminally refused, and still refuses, to deliver the said land to the aforementioned Sabino Vayson. The Exhibits A, B, and C form an integral part of this complaint. Said crime was committed in violation of the law and, particularly, of article 257 of the Penal Code."

The exhibits mentioned in the complaint and which are made an integral part thereof, are, respectively, of the following tenor:

"Exhibit A.

"Sabino Vayson, plaintiff, vs. Cayetano Ramayrat, defendant.

"The plaintiff alleges, as a cause of action:

"1. That both are natives and residents of the municipality of Misamis, Province of Misamis, P. I.

"2. That in or about the year 1895 the defendant asked permission of the plaintiff to erect a house on the latter's land (the plaintiff's property) situated in the barrio of Mindug of this district, under the condition that he, the defendant, would plant the said land in coconuts and divide in equal shares with the plaintiff the trees that should survive.

"3. That the defendant did not fulfill his promise.

"He prays the court to render judgment in his favor by sentencing the defendant to return the said land to him and to pay the costs of this suit.

"MISAMIS, MISAMIS, February 1, 1910.

"JOSE VAYSON,

"Counsel for the plaintiff"

"Exhibit B.

"(Civil case No. 112.)

"Sabino Vayson, plaintiff, vs. Cayetano Ramayrat, defendant.

"JUGDMENT.

"Complaint filed. Judgment rendered in favor of the plaintiff by sentencing the defendant to make the return and to pay the costs of the case.

"MISAMIS, MISAMIS, March 9, 1910.

"ANDRES PACIENTE,

"Auxiliary Justice of the Peace"

"Exhibit C—1.

"In the justice of the peace court of Misamis, Province of Misamis, P. I. Sabino Vayson, plaintiff, vs. Cayetano Ramayrat, defendant. Case No. 112.

"WRIT OF EXECUTION.

"To the governor, sheriff, or to any other person authorized by law to serve writs.

"Greeting:

"Whereas, on March 9, 1910, judgment was rendered against Cayetano Ramayrat, the defendant in the present case, in an action prosecuted before the justice of the peace court of this municipality of Misamis by Sabino Vayson, the plaintiff in this case, by sentencing the said defendant to return to the latter a parcel of unirrigated land situated in the sitio of Mindug, a district of this municipality.

"Therefore, you are ordered to place the plaintiff, Sabino Vayson, in possession of the said land and to make return of this writ to this court within a period of fifteen days from the date hereof.

"Failure to comply with this order will subject you to the penalties of the law.

"Given under my hand this twenty-fifth day of March, 1910.

"TIBURCIO K. SORIANO,

"Justice of the Peace"

"Exhibit C—2.

"I, Cayetano Ramayrat, the undersigned, certify that I am not willing to deliver to Sabino Vayson or to the deputy sheriff of this municipality, Cosme Nonoy, the land in my possession, as I have been directed to do by the said sheriff, in order that, in the latter case, he might deliver the same to the aforementioned Vayson, in conformity with the order issued by the justice of the peace of this municipality.

"MISAMIS, April 29, 1910.

"CAYETANO RAMAYRAT."

The defendant demurred to the complaint, upon the following grounds:

- That the facts charged do not constitute a crime.
- That, in the complaint, allegations are made which, if true, would be a justification and legal exemption for the defendant.

By an order of February 9, 1911, the court sustained the demurrer interposed by the defense and therefore dismissed the complaint, with the costs de oficio. From this order an appeal has been taken by the Attorney-General.

Virtually, it is stated in the order appealed from that the defendant grossly disobeyed the order of the justice of the peace court (Exhibits B and C) to deliver the land in question to Sabino Vayson; that such disobedience, were it punishable, would fall within the sanction of sections 232 and 236 of Act No. 190 (Code of Procedure in Civil Actions), and not of article 252 of the Penal Code, which latter, in the opinion of the court, was repealed by the two former, in so far as it be incompatible therewith; and that, inasmuch as the said sections of Act No. 190 punish the disobedience to judicial orders only when these latter are legal, and that the order herein concerned of the justice of the peace is manifestly illegal, the result follows as a necessary conclusion, according to the trial judge, that the disobedience charged to the defendant in the complaint does not constitute a penally actionable matter, pursuant to the law. And it is said in the same order appealed from that the aforementioned order of the justice of the peace is illegal for the reason that it was issued in an action brought for the recovery of possession of land, which could not validly be heard by a justice of the peace court, as such classes of actions come exclusively within the jurisdiction of the Courts of First Instance.

Section 232 of Act No. 190, cited in the order appealed from, provides, in part, as follows:

"SEC. 232. What other acts are contempts of court.—A person guilty of any of the following acts may be punished as for contempt:

"(a) Disobedience of, or resistance to, a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

* * * * *

Section 236 penalizes such acts of contempt with a fine that shall not exceed one thousand pesos, or imprisonment of not more than six months, or both, in the discretion of the court.

Article 252 of the Penal Code, cited in the complaint and which the trial court held to be repealed by the said sections of the Code of Civil Procedure, is as follows:

"Art. 252. The persons who, without being included in article 249, should resist the authorities, or their agents, or should grossly disobey them in the performance of the duties of their office, shall be punished with the penalties of arresto mayor and a fine of from 325 to 3,250 pesetas."

The Attorney-General alleges as a ground for his appeal that the trial court erred in holding that disobedience of judicial orders is not comprised within article 252 of the Penal Code and that this article was repealed by sections 232 and 236 of the Code of Civil Procedure, in so far as it was incompatible therewith.

In view of the opinion we have formed of the facts alleged in the complaint, it becomes unnecessary for us to decide the aforementioned questions set up in the Attorney-General's brief. We do not think that the defendant disobeyed any judicial order whatever. The order issued by the justice of the peace (Exhibit C) and alleged to

have been disobeyed, is a writ of execution and addressed, as was natural and proper, to the competent sheriff, and not to the defendant. In it the sheriff is commanded to place the plaintiff, Sabino Vayson, who had won in the suit against the herein defendant for the recovery of the property, in possession of the said disputed land. Such command is made solely and exclusively to the sheriff, and not to the defendant. Absolutely no order whatsoever is made to the latter; nothing is demanded of him and he is not restrained from doing anything, neither is he required to do anything; he is not told to perform, or not to perform, any act whatsoever; in a word, the writ or order in question in no wise refers to him. Nor could this process, indeed, be addressed to the defendant, for the reason that it wholly concerns the execution of a judgment, the serving of which is specially and exclusively incumbent upon the sheriff. And it is superfluous to add that the defendant could hardly disobey an order that in no wise concerned him. The order itself leaves this to be clearly understood by warning the sheriff, and no one else, that he shall be liable to the penalties of the law in case of noncompliance. "Failure to comply with this order," it says literally, "will subject you," the sheriff, "to the penalties of the law." The warning is solely for the sheriff, because the writ must be served by him, and he alone it was who could fail to comply with or disobey it.

But, while the defendant did not disobey the said writ of execution, may it be said that he disobeyed the sentence of the justice of the peace who ordered that he restore the disputed land to the plaintiff, Vayson? It is contended by the Attorney-General in his brief that he did. He says that the act performed by the defendant in setting forth in Exhibit C-2 that he was not willing to deliver the land to Vayson was one of disobedience to the said sentence. This may be true, and undoubtedly is, in a certain sense,—in the same sense that it may be said that he who infringes or violates any law passed by the legislative power disobeys its authority; or that the defendant who refuses to surrender himself voluntarily and of his own free accord to the prison authorities for the purpose of serving his sentence disobeys the sentence that imposes imprisonment upon him. But this is not the disobedience that is punished as a crime by article 252 of the Penal Code. The juridical conception of this crime consists in a failure to comply with orders directly issued by the authorities in the exercise of their official duties, and not with legal provisions of a general character, nor with judicial decisions merely declaratory of rights or obligations, such as those proper to be rendered in a civil suit relative to property or the possession of land, like that which gave rise to the present controversy. Nor even do the violations of prohibitory decisions, although undoubtedly of a more serious character, constitute the crime of disobedience to the authorities provided for and punished by the aforesaid article of the Penal Code, for they give rise only to a civil action. (Decisions of the supreme court of Spain of September 25 and October 4, 1889, and June 30, 1893.)

The judgment of the justice of the peace which is supposed to have been disobeyed, orders, it is true, the herein defendant to return the land, the subject of the suit, to the plaintiff, Vayson, but it does not order him, nor could it legally order him, to effect the return himself. As hereinbefore stated, this is the duty of the sheriff, to whom the law entrusts the execution of judgments.

The Code of Civil Procedure contains the following provisions with respect to writs of execution :

"SEC. 443. When execution may issue.—The party in whose favor judgment is given, may, at any time within five years after the entry thereof have a writ of execution issued for its enforcement, as hereinafter provided.

"SEC. 444. Issuance, form, and requisites of execution.—The execution must be issued in the name of the United States of America, Philippine Islands, sealed with the seal of the court, and subscribed by the judge, or clerk thereof, and be directed to the governor of the province, or any of his deputies, and must intelligibly refer to the judgment, stating the court, and the province where the record of the judgment is * * *, and must direct the governor or his deputy, substantially as follows:

* * * * *

"(e) If it be for the delivery of the possession of real or personal property, it must require the governor, or his

deputy, to deliver the possession of the same, describing it, to the party entitled thereto. * * *

According to these sections, it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgment in question, and, in fact, it was he himself, and he alone, who was ordered by the justice of the peace who rendered that judgment, to place the plaintiff, Vayson, in possession of the land. The defendant in this case had nothing to do with that delivery of possession, and, consequently, his statements expressing his refusal or unwillingness to effect the same, are entirely officious and impertinent and therefore could not hinder, and much less prevent, the delivery being made, had the sheriff known how to comply with his duty. It was solely due to the latter's fault, and not to the alleged disobedience of the defendant, that the judgment was not duly executed. For that purpose the sheriff could even have availed himself of the public force, had it been necessary to resort thereto.

The Attorney-General brings up still another aspect of the case. He states in his brief that the defendant grossly disobeyed an agent of the authorities, such as is the sheriff, by not delivering the land to Vayson, as he was ordered to do by the said sheriff. In accordance with article 252 of the Penal Code, disobedience to the agents of the authorities is punishable only when they are in the exercise of the duties that particularly pertain to their office. As aforesaid, the duty of the sheriff in the present case was to place Vayson in possession of the land. Instead of so doing, he limited his action to telling or ordering the defendant to deliver the land to the said Vayson. In acting in this wise, not only did he fail duly to discharge his official duty, but he openly neglected to perform the same. He had no right whatever to require that the defendant should perform a duty which he himself ought to have performed: to do so, would be tantamount to imposing one's own duties upon another, which, evidently, would be illegal and unjust. Under such circumstances, the defendant's disobedience, if any there were, does not constitute the crime aforementioned.

Upon the foregoing grounds we hold that the facts alleged in the complaint do not constitute a crime; we, therefore, affirm the order appealed from, with the costs de oficio.

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

CONCURRING

CARSON, J.:

I concur. I think it proper, however, to indicate that as I understand it, the majority opinion is not to be construed as holding that defendant would not have been guilty of the offense defined and penalized in article 252 of the Penal Code had he refused to surrender possession of the property to the sheriff himself, upon demand therefor, in order that the sheriff himself might give possession to the person entitled thereto as indicated in the writ.

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