

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. SATURNINA RIZAL, DEFENDANT AND APPELLEE.*G.R. No. 7946. March 09, 1914*

Ponente: CARSON, J.

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The defendant in this case was convicted in the municipal court of the city of Manila of a violation of a municipal ordinance against gambling, and appealed to the Court of First Instance of Manila. In that court a demurrer to the information was sustained on the ground that the action was brought in the name of the city of Manila, and not in the name of the United States as required by the provisions of section 2 of General Orders, No. 58. This is an appeal on behalf of the Government from the order sustaining the demurrer.

The only question before us is whether prosecutions charging violations of the municipal ordinances of the city of Manila, for which punishment by fine or imprisonment is prescribed, may be brought in the name of the city of Manila. This question must be answered in the negative. Section 2 of General Orders, No. 58, provides that in this jurisdiction "all Prosecutions for public offenses shall be in the name of the United States against the persons charged with the offenses." Violations of municipal ordinances for which punishment by fine or imprisonment is lawfully prescribed are, in our opinion, public offenses as that term is used in the above-cited section of the order, and prosecutions for such violations of municipal ordinances must therefore be instituted in the name of the United States. (*Santa Barbara vs. Sherman*, 61 Cal., 57; *City of Brownville vs. Cook*, 4 Neb., 101.)

The American cases on this point are digested in American Digest, volume 36, Municipal Corporations, section 1401, and in American Digest, decennial edition, volume 14, Municipal Corporations, section 636. A review of the cases there cited discloses that the courts in a number of the States have held that constitutional provisions requiring all prosecutions to be in the name of the State do not preclude the legislature from authorizing a municipality to maintain actions in its own name for violations of its ordinances. The reasoning on which these decisions rest is indicated in the following extract from Dillon on Municipal Corporations (5th ed., sec. 746):

"The distinction between statute law and municipal by-laws has been pointed out, and the subject of concurrent prohibitions of the same act by the general law and by the local ordinances of a municipality treated in the chapter on Ordinances. The distinction is there drawn, and is to be observed, between acts not essentially criminal, relating to municipal police and regulation, and those intrinsically criminal, and which are made punishable as public offenses by the general laws of the State. The pecuniary penalties which are annexed to violations of the former class the legislature may, we think, authorize the corporation to enforce in its own name, by civil action or by complaint, and provision need not necessarily be made that they shall be prosecuted in the name of the people or of the State."

But without discussing whether in any event the distinction thus drawn could properly be made in this jurisdiction, it is sufficient at this time to point out that there is no express authority granted the city of Manila in its charter to institute criminal actions in its own name, and that in this jurisdiction actions instituted to enforce penalties of fine or imprisonment prescribed for the violation of municipal ordinances are purely criminal actions

and are in no sense civil in their nature.

The order sustaining the demurrer in the court below should be and is hereby affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Moreland, Trent, and Araullo, JJ., concur.

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