

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. APOLINARIO CUNANAN, DEFENDANT AND APPELLEE.

G.R. No. 8267. December 27, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of desertion. The complaint was presented in the Court of First Instance of the city of Manila and alleged:

"That on or about the 22d day of June, 1912, the said Apolinario Cunanan was duly enlisted in the Bureau of Navigation, of the city of Manila, Philippine Islands, as a seaman, and had been assigned by said Bureau of Navigation to render services on board the steamship Rover of said Bureau of Navigation; that on said date said steamship Rover was in the navigable jurisdictional waters of the Philippine Islands, to wit, tied up at the port of Cebu, Province of Cebu, Philippine Islands, making trips from Cebu to Samar and intermediate ports in the Philippine Islands; that said Apolinario Cunanan on said date and before the term of his enlistment had expired, did then and there willfully, unlawfully, and feloniously absent himself for more than ten days, without license from his superiors, and with the intention not to return, by then and there abandoning said steamship Rover in said port of Cebu, Philippine Islands and deserting from the service, in order not to return, in violation of section 9 (c) of Act No. 1980, enacted by the Philippine Legislature."

Upon this complaint the defendant was duly arrested, and brought before the court. Upon arraignment, the defendant demurred to the complaint, upon the following grounds, to wit: "(1) That the court had no jurisdiction of the person of the defendant or of the subject of the action; (2) that the complaint did not show facts sufficient to constitute a cause of action; and (3) that the complaint was ambiguous, unintelligible, and uncertain."

Upon the issue thus presented the Honorable Simplicio del Rosario, judge, sustained the demurrer, holding that the Courts of First Instance of the city of Manila did not have jurisdiction to try the accused, and ordered that he be held and delivered to the proper authorities of the Province of Cebu, where the crime was alleged to have been committed, for accusation and trial, in accordance with the provisions of section 23 of General Orders, No. 58.

From that sentence the Attorney-General appealed to this court. The Attorney-General contends in his argument in this court that the offense is a continuing offense, and that any court, in the jurisdiction of which the defendant is found, may try the defendant. In support of this contention he cites some authorities. In case of a desertion from the United States Army, for instance, the deserter may be tried by a court-martial in any jurisdiction in which he may be found. But this authority is conceded to courts-martial upon the theory that the jurisdiction of a court-martial is not limited by territorial bounds. The jurisdiction of the Courts of First Instance of the Philippine Islands, in criminal cases, is limited to certain well-defined territory. They cannot take jurisdiction of persons charged with an offense alleged to have been committed outside of that limited territory. There are well-defined offenses which are or transitory offenses. Such offenses are well recognized at common law. (4 Blackstone's Commentaries, 305.) Such offenses may be tried by the court of any jurisdiction in which the defendant may be found. Such offenses are continuing or transitory upon the theory that there is a continuance or repetition of the

offense wherever the defendant may be found. For example, in a case of larceny, if the defendant should commit the crime in one county or state and flee with the property stolen into another county or state, the courts have held that in each new county or state there is a continuance of the unlawful taking, and all the essential elements of larceny exist in the new county or state. (Commonwealth vs. Uprichard, 3 Gray, Mass., 434; Commonwealth vs. White, 123 Mass., 430; Clark's Criminal Law, 366.)

While the common law treated certain offenses as transitory, as in the case of larceny, many of the States of the Union have regulated it by statute, such statutes expressly authorizing the trial of persons accused of certain offenses, to be tried in any county or state where they may be found with the effects of the larceny. Act No. 518 of the Philippine Commission provides in section 3 that persons who conspire together to form a band of robbers, for the purpose of stealing carabaos or other personal property, by means of force and violence, etc., may be punished therefor in the Court of First Instance of any province in which they may be taken or from which they have fled. We find no such provision, however, in Act No. 1980, under which the present defendant is accused.

The theory upon which the accused in a continuing or transitory offense may be tried in any jurisdiction in which he is found, is based upon the ground that there is a new commission of the offense in the county or state in which he is found. The complaint presented in such cases does not, like that in the present, allege that the crime was committed in some other county or state, where it was originally committed, but in the county or state where the defendant is found. In the present case it will be noted from reading the complaint copied above, that the same alleges that the offense was committed in the Province of Cebu. There is no allegation in the complaint that the offense was committed within the jurisdiction of the Court of First Instance of the city of Manila. The complaint should show that the offense was committed within the jurisdiction of that court. A complaint which shows positively that an offense was not committed within the jurisdiction of the court is demurrable.

We do not feel called upon at the present time to decide whether the offense of desertion under Act No. 1980 is a continuing offense or not. We simply decide, at the present time, that, inasmuch as there is no allegation in the complaint alleging that the crime with which the defendant is charged was committed within the jurisdiction of the Court of First Instance of the city of Manila, that said court is without jurisdiction to try said offense. The judgment, therefore, of the lower court sustaining the demurrer, is hereby affirmed and it is ordered that the cause be remanded to the lower court whence it came and that an order be issued permitting the plaintiff, within a period of five (5) days, to make such amendments in the complaint originally presented, as may be deemed necessary, within the provisions of the law. If, within said period of five days, no amendments are made, then and in that case the judgment heretofore rendered by the Honorable Simplicio del Rosario, judge, shall become final.

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

Carson and Trent, JJ., dissent.

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