

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. WILLIAM C. HART, C. J. MILLER, AND SERVILIANO NATIVIDAD, DEFENDANTS AND APPELLANTS.

G.R. No. 8848. November 21, 1913

Ponente: TRENT, J.

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TRENT, J.:

The appellants, Hart, Miller, and Natividad, were arraigned in the Court of First Instance of Pampanga on a charge of vagrancy under the provisions of Act No. 519, found guilty, and were each sentenced to six months' imprisonment. Hart and Miller were further sentenced to a fine of P200, and Natividad to a fine of P100. All appealed.

The evidence of the prosecution as to the defendant Hart shows that he pleaded guilty and was convicted on a gambling charge about two or three weeks before his arrest on the vagrancy charge; that he had been conducting two gambling games, one in his saloon and the other in another house, for a considerable length of time, the games running every night. The defense showed that Hart and one Dunn operated a hotel and saloon at Angeles which did a business, according to the bookkeeper, of P96,000 during the nineteen months preceding the trial; that Hart was also the sole proprietor of a saloon in the barrio of Tacondo; that he raised imported hogs which he sold to the Army garrison at Camp Stotsenberg, which business netted him during the preceding year about P4,000; that he was authorized to sell several hundred hectares of land owned by one Carrillo in Tacondo; that he administered, under power of attorney, the same property; and that he furnished a building for and paid the teacher of the first public school in Tacondo, said school being under Government supervision.

The evidence of the prosecution as to Miller was that he had the reputation of being a gambler; that he pleaded guilty and was fined for participating in a gambling game about two weeks before his arrest on the present charge of vagrancy; and that he was seen in houses of prostitution and in a public dance hall in Tacondo on various occasions. The defense showed without contradiction that Miller had been discharged from the Army about a year previously; that during his term of enlistment he had been made a sergeant; that he received rating as "excellent" on being discharged; that since his discharge he had been engaged in the tailoring business near Camp Stotsenberg under articles of partnership with one Burckerd, Miller having contributed P1,000 to the partnership; that the business netted each partner about P300 per month; that Miller attended to business in an efficient manner every day; and that his work was first class.

The evidence of the prosecution as to Natividad was that he had gambled nearly every night for a considerable time prior to his arrest on the charge of vagrancy, in the saloon of one Raymundo, as well as in Hart's saloon; that Natividad sometimes acted as banker; and that he had pleaded guilty to a charge of gambling and had been sentenced to pay a fine therefor about two weeks before his arrest on the vagrancy charge. The defense showed that Natividad was a tailor, married, and had a house of his own; that he made good clothes, and earned from P80 to P100 per month, which was sufficient to support his family.

From this evidence it will be noted that each of the defendants was earning a living at a lawful trade or business, quite sufficient to support himself in comfort, and that the evidence which the prosecution must rely upon for a conviction consists of their having spent their evenings in regularly licensed saloons, participating in gambling games which are expressly made unlawful by the Gambling Act, No. 1757, and that Miller frequented a dance hall and houses of prostitution.

Section 1 of Act No. 519 is divided into seven clauses, separated by semicolons. Each clause enumerates a certain class of persons who, within the meaning of this statute, are to be considered as vagrants. For the purposes of this discussion, we quote this section below, and number each of these seven clauses.

"(1) Every person having no apparent means of subsistence, who has the physical ability to work, and who neglects to apply himself or herself to some lawful calling; (2) every person found loitering about saloons or dram shops or gambling houses, or tramping or straying through the country without visible means of support; (3) every person known to be a pickpocket, thief, burglar, ladrone, either by his own confession or by his having been convicted of either of said offenses, and having no visible or lawful means of support when found loitering about any gambling house, cockpit, or in any outlying barrio of a pueblo; (4) every idle or dissolute person or associate of known thieves or ladrones who wanders about the country at unusual hours of the night; (5) every idle person who lodges in any barn, shed, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof; (6) every lewd or dissolute person who lives in and about houses of ill fame; (7) every common prostitute and common drunkard, is a vagrant."

It is insisted by the Attorney-General that as visible means of support would not be a bar to a conviction under any one of the last four clauses of this act, it was not the intention of the Legislature to limit the crime of vagrancy to those having no visible means of support. Relying upon the second clause to sustain the guilt of the defendants, the Attorney-General then proceeds to argue that "visible means of support" as used in that clause does not apply to "every person found loitering about saloons or dram shops or gambling houses" but is confined entirely to "or tramping or straying through the country." It is insisted that had it been intended for "without visible means of support" to qualify the first part of the clause, either the comma after gambling houses would have been omitted, or else a comma after country would have been inserted.

When the meaning of a legislative enactment is in question, it is the duty of the courts to ascertain, if possible, the true legislative intention, and adopt that construction of the statute which will give it effect. The construction finally adopted should be based upon something more substantial than the mere punctuation found in the printed Act. If the punctuation of the statute gives it a meaning which is reasonable and in apparent accord with the legislative will, it may be used as an additional argument for adopting the literal meaning of the words of the statute as thus punctuated. But an argument based upon punctuation alone is not conclusive, and the courts will not hesitate to change the punctuation when necessary, to give to the Act the effect intended by the Legislature, disregarding superfluous or incorrect punctuation marks, and inserting others where necessary.

The Attorney-General has based his argument upon the proposition that neither visible means of support nor a lawful calling is a sufficient defense under the last four paragraphs of the section; hence, not being universally a defense to a charge of vagrancy, they should not be allowed except where the Legislature has so provided. He then proceeds to show, by a "mere grammatical criticism" of the second paragraph, that the Legislature did not intend to allow visible means of support or a lawful calling to block a prosecution for vagrancy founded on the charge that the defendant was found loitering around saloons, dram shops, and gambling houses.

A most important step in this reasoning, necessary to make it sound, is to ascertain the consequences flowing from such a construction of the law. What is loitering? The dictionaries say it is idling or wasting one's time. The time

spent in saloons, dram shops, and gambling houses is seldom anything but that. So that under the proposed construction, practically all who frequent such places commit a crime in so doing, for which they are liable to punishment under the Vagrancy Law. We cannot believe that it was the intention of the Legislature to penalize what, in the case of saloons and dram shops, is under the law's protection. If it be urged that what is true of saloons and dram shops is not true of gambling houses in this respect, we encounter the wording of the law, which makes no distinction whatever between loitering around saloons and dram shops, and loitering around gambling houses,

The offense of vagrancy as defined in Act No. 519 is the Anglo-Saxon method of dealing with the habitually idle and harmful parasites of society. While the statutes of the various States of the American Union differ greatly as to the classification of such persons, their scope is substantially the same. Of those statutes we have had an opportunity to examine, but two or three contain a provision similar to the second paragraph of Act No. 519. (Mo. Ann. Stat, sec. 2228; N. D. Rev. Codes, sec. 8952; N. M. Comp. Laws 1897, sec. 1314.) That the absence of visible means of support or a lawful calling is necessary under these statutes to a conviction for loitering around saloons, dram shops, and gambling houses is not even negated by the punctuation employed. In the State of Tennessee, however, we find an exact "counterpart for paragraph 2 of section 1 of our own Act (Code of Tenn., sec. 3023), with the same punctuation:

"* * * or for any person to be found loitering about saloons or dram shops, gambling houses, or houses of ill fame, or tramping or strolling through the country without any visible means of support."

A further thought suggests itself in connection with the punctuation of the paragraph in question. The section, as stated above, is divided into seven clauses, separated by semicolons. To say that two classes of vagrants are defined in paragraph 2, as to one of which visible means of support or a lawful calling is not a good defense, and as to the other of which such a defense is sufficient, would imply a lack of logical classification on the part of the legislature of the various classes of vagrants. This we are not inclined to do.

In the case at bar, all three of the defendants were earning a living by legitimate methods in a degree of comfort higher than the average. Their sole offense was gambling, which the legislature deemed advisable to make the subject of a penal law. The games in which they participated were apparently played openly, in a licensed public saloon, where the officers of the law could have entered as easily as did the patrons. It is believed that Act No. 1757 is adequate, if enforced, to suppress the gambling proclivities of any person making a good living at a lawful trade or business.

For these reasons, the defendants are acquitted, with the costs de oficio.

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

Johnson and Moreland, JJ., concur in the result.

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