

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS., JOSE TAMPARONG ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 9527. August 23, 1915

Ponente: TRENT, J.

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TRENT, J.:

The defendants were convicted by the justice of the peace of Baguio for having played the game of chance called "monte" in violation of Ordinance No. 35. They appealed to the Court of First Instance, where they were again tried and convicted upon the same charge. An appeal was allowed to this court because the validity of Ordinance No. 35 was drawn in question during the trial of the cause in the court below.

Two questions are raised by "this appeal: (1) Is Ordinance No. 35 valid, and (2) is this court required under the law to examine the evidence for the purpose of determining the guilt or innocence of the defendants?

The first question is answered in the affirmative by this court in the case of the United States vs. Joson (26 Phil. Rep., 1). The cases are on all fours, and a further discussion of this branch of the case is unnecessary.

With reference to the second question, it is said that by reason of the defendants' having in the lower court questioned the legality of Ordinance No. 35, for the violation of which they have been convicted, this case has been brought to us in all its details of law and fact, including the evidence taken at the trial, on which the Court of First Instance founded its judgment touching the guilt and condemning the defendants. While, on the other hand, it is contended that the questions of fact, which we are [not] authorized to examine, are those which are essential to be examined for the purpose of determining the legality of Ordinance No. 35 and the penalties provided for therein, and no other.

At the outset it may be well to briefly outline the criminal procedure in force in this jurisdiction prior to the promulgation on the 23d day of April, 1900, of General Orders No. 58. The royal order dated December 17, 1886, directing the execution of the royal decree of September 4, 1884, wherein it was ordered that the Penal Code in force in the Peninsula, as amended in accordance with the recommendations of the code committee, be published and applied in the Philippine Islands, as well as the Provisional Law of Criminal Procedure which accompanied it. These two laws, having been published in the Official Gazette of Manila on March 13 and 14, 1887, became effective four months thereafter.

According to the provisions of Rule 1 of the above-mentioned provisional law, the justices of the peace, or gobernadorcillos, had original jurisdiction over the offenses set forth in Book 3 of the Penal Code.

Rule 2 provided that "when the justice of the peace or the gobernadorcillo receives notice that there has been committed any one of the offenses provided for in Book 3 of the Penal Code which can be prosecuted by the Government, he shall issue summons for an oral trial to the complainant, if any, to the alleged culprit, and to the witnesses who may be able to testify as to the facts, fixing the day and hour for holding the trial. If this (the trial) takes place at the residence of the promotor fiscal, he shall also be summoned." Rule 3 provided that the same

procedure should be followed in those cases which can only be prosecuted at the instance of a private party, except that the promotor fiscal was not cited.

Neither the Provisional Law, the criminal procedural laws of the Peninsula, nor the autos acordados prescribed any special form for the complaint to be presented to the justice of the peace or the gobernadorcillo. As to this point, it seems that the Compilation of the Laws of Criminal Procedure of 1879 was applicable. Articles 405, 406, and 412 read: "Art. 405, The complaint made in writing must be signed by the complainant, and if he cannot do so, by some other person at his request. The authority or official who receives it shall rubricate and seal every page in the presence of the person who presents it, which also he may do himself or through another person at his request.

"Art. 406. When the complaint is oral, it shall be reduced to writing by the authority or official who receives it, where- in, in the form of a declaration, shall be set forth such information as the complainant may have regarding the act complained of and the circumstances thereof, and both shall sign it at the bottom. If the complainant cannot sign his name, some other person shall do so at his request/1

"Art. 412. Criminal cases that are not instituted by the Government must begin with a complaint."

The oral trial referred to in Rule 2 was held within three days next following the date when the justice of the peace or the gobernadorcillo received information that the offense had been committed (Rule 4), the procedure being that provided for in Rule 9, which reads: "The trial shall be public, beginning with the reading of the complaint, if any there be, followed by the examination of the witnesses summoned and the introduction of such other evidence as the complainant, accuser, and public prosecutor, if he take part, may request and the justice of the peace or the gobernadorcillo may regard as pertinent. Immediately thereafter the accused shall be given a hearing, the witnesses who appear in his defense shall be examined, and such other evidence as the justice or the gobernadorcillo may declare to be admissible shall be adduced. The parties shall forthwith make such pleas as they think expedient in support of their respective contentions, the first to speak being the public prosecutor, if he take part, then the private complainant, and finally the accused.

"The representative of the public prosecutor shall attend the trial for misdemeanors, whenever he is cited thereto, in accordance with Rule 2."

A record of the trial was made, wherein the whole procedure was clearly and succinctly set forth, and signed by all the parties participating in the trial. (Rule 11.)

After trial and rendition of judgment, either of the parties could appeal to the Court of First Instance within the first day next following that on which notice of the rendition of judgment was served. The appeal suspended the judgment.

After the appeal had been allowed, the justice of the peace or the gobernadorcillo remitted to the Court of First Instance the original record and cited the parties to appear within the period of five days before the appellate court. This time could be extended, if the circumstances of the case required. (Rule 14.) If the appellant appealed, a day was fixed for the trial; but if he did not appear, the appeal was dismissed. (Rule 15.) Rule 16 provides the procedure for the trial in the second instance. This rule reads: "The hearing at the trial shall be public, and all the proceedings in the case shall be read therein; then the parties or their attorneys may speak in their turn, and thereafter the judgment shall be pronounced and communicated to them.

"A record of the trial shall be drawn up in the same manner as fixed by Rule 11."

Rule 17 reads: "In this second instance no evidence may be admitted other than that which, offered in the first instance, was not taken for reasons independent of the will of the parties who had offered it."

Rule 19 provides: "The judgment of the Court of First Instance will be executory, and there will be no recourse from the same except that of responsibility before the audiencia del territorio."

The provisions of General Orders No. 58 pertinent to the question under consideration, are as follows:

"SEC. 43. From all final judgments of the Courts of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts an appeal may be taken to the Supreme Court as herein- after prescribed. Appeals shall also lie from the final judgments of justices of the peace in criminal cases to the courts of the next superior grade, and the decisions of the latter thereon shall be final and conclusive except in cases involving the validity or constitutionality of a statute, wherein appeal may be made to the Supreme Court."

"SEC. 54. 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."

Section 43 has been amended by section 34 of Act No. 1627 so as to read as follows:

"From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Supreme Court as hereinafter prescribed. 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. Upon such notice being so filed, the justice shall forward to the Court of First Instance all original papers and a transcript of all docket entries in the cause, and the provincial fiscal shall thereupon take charge of the cause in behalf of the prosecution. The judgment of the Court of First Instance in such appeals shall be final and conclusive, except in cases involving the validity or constitutionality of a statute or the constitutionality of a municipal or township ordinance."

In view of the fact that this court took the view, prior to the passage of Act No. 1627, that the military governor and the framers of General Orders No. 58 intended by the use of the word "statute" found in section 43 (*supra*) to include "ordinances," the amendment of this section by section 34 of that Act does not affect the issue in the instant case. The original section provided that "an appeal may be made to the Supreme Court in cases involving the validity or constitutionality of a statute," and the section, as amended, authorizes appeals to the Supreme Court in the same class of cases.

It is urged that as the civil-law term "appeal" is used in section 43 (*supra*), we must apply the same rule of construction that the courts in England and the United States have almost uniformly applied to the same term and thus derive an unqualified review of both the law and the facts. This doubtless would be a correct position in some jurisdictions in the American Union, as there the technical civil-law meaning of the term "appeal" is followed. The reason for so doing is set forth in the case of *Nashville Ry. & Light Co. vs. Bunn* (168 Fed. Rep., 862), wherein the court said:

"The distinction between a 'writ of error' which brings up the record in an action of law for a review of questions of law only, and an 'appeal' which involves a rehearing upon both the facts and the law, is vital. These remedies have their origin and functions in the inherent difference between courts of law and courts of equity, differences which are recognized in the Constitution of the United States and the laws of Congress. The 'writ of error' is a common-law writ, and searches the record for errors of law in the final judgment of a common-law court. If error is found, the judgment awards a *venire facias de novo*. The 'appeal' is a procedure which comes to us from the civil law along with the fundamentals which go to make up the jurisprudence of a court of equity. Its office is to remove the entire cause, and it subjects the transcript to a scrutiny of fact and

law and is in substance a new trial."

Under the system of procedure which obtains in the Philippine Islands, both legal and equitable relief is dispensed in the same tribunal. We have no courts of law and courts of equity as they are known and distinguished in England and the United States. All cases (law and equity) are presented and tried in the same manner, including their final disposition in the Supreme Court. Therefore, the word "appeal," as used in section 43 (supra), does not necessarily imply the removal of the cause from one tribunal to another in its entirety, subjecting the facts, as well as the law, to a review or a retrial, but it is to be interpreted by the ordinary rules of construction.

The intention of the framers of General Orders No. 58 is the law. In order to ascertain that intention the provisions of the order must be construed in the light of existing law and the circumstances at the time of its promulgation.

At the time General Orders No. 58 went into effect, criminal cases originating in Courts of First Instance came to the audiencia in their entirety, subjecting both the law and the facts to a review or retrial. But the audiencia, or Philippine Supreme Court, could not review the judgment of a Court of First Instance in any case tried on appeal from courts of justices of the peace wherein the latter courts had jurisdiction. Such judgments were final and conclusive. The aggrieved party could go no further with the case. The only recourse he had was that mentioned in Rule 19 (supra), The penalties for violations of the provisions of Book 3 of the Penal Code over which justices of the peace then had jurisdiction were generally arresto or arresto menor and small fines. This was the law in force at the time section 43 (supra) was framed and these were the conditions confronting the framers of that section at that time. What changes did the section make?

Section 43 authorizes appeals to the Supreme Court from all final judgments of Courts of First Instance "and in all cases in which the law now provides for appeals from said courts." This part of the section is limited to judgments rendered in criminal cases originating in Courts of First Instance. This is necessarily true because the latter part of the section makes the decisions of the "courts of next superior grade (which were Courts of First Instance) rendered in cases appealed from justices' courts final and conclusive, except in cases involving the validity or constitutionality of a statute." The result is that the former procedure was amended by section 43 so as to also authorize appeals to the Supreme Court in the cases mentioned in the latter part thereof when the validity or constitutionality of a statute was drawn in question. To this extent only was the former procedural law changed in so far as the question at issue is concerned. Among the reasons which induced the lawmakers to make this change was the fact that the jurisdiction of justices of the peace was "extended to all offenses which the Penal Code designates as punishable by arresto mayor in all of its grades." (Sec. 108.)

If we had found the ordinance attacked in the case at bar to be illegal and unconstitutional, the judgment appealed from would necessarily have to be set aside and defendants would have no interest in presenting to us the evidence taken at the trial. But we have maintained the legality of that ordinance, and in so doing have we exhausted our powers and reached the limit of our inquiry? Section 43 does not expressly so limit our power. Neither does it expressly authorize us to review the testimony touching the guilt or innocence of the defendants.

The distinction between the illegality of a penalty imposed by a municipal corporation and the correctness of that imposed by a justice of the peace under a municipal ordinance, and between the illegality of the ordinance and that of the proceedings or actions taken under it, is plain and broad. An ordinance may, from the standpoint of the regularity of all the proceedings leading up to and inclusive of its enactment, be absolutely faultless and yet the ultimate act done or enacted may be inherently or intrinsically illegal or unconstitutional. On the other hand, the latter may be perfectly unassailable and yet the ordinance be illegal or unconstitutional by reason of some fact or circumstance connected with its passage. It may, for instance, have been presented in a wrong manner, at a wrong time, or not voted for as directed by law. It is to facts of this class or character that section 43 refers when it says

"the latter thereon shall be final and conclusive except in cases involving the validity or constitutionality of a statute."

Such appears to be the meaning and intention manifested from the provisions of the latter part of section 43, already quoted, especially when they are considered in the light of the former practice above indicated. Under that practice no appeals whatever were allowed to the Supreme Court from judgments of Courts of First Instance in cases originating in justices' courts. We must assume that the framers of section 43 had knowledge of this practice and its effects. The framers desired to amend this practice to the extent only of providing a way by which statutory questions, which might arise in these cases, could be reviewed by the Supreme Court. This object could be very imperfectly obtained, if, when the court assumed jurisdiction of such a case, it would not only determine the statutory questions, but also inquire into and determine every other question raised during the progress of the trial. In effect, this would entirely destroy the former practice, because it would render it possible to bring every case here in its entirety. All that would be necessary would be to raise some statutory question, whether material to the decision of the case or not, and the right of appeal and reexamination of the whole case would be assured. Clearly, no such result was intended, nor is it manifest from the language employed in section 43. But it is urged that our ruling in this matter "involves the legal absurdity of disjoining a single case and turning over one fragment to one court and another parcel to another court." (Elliott on Appellate Procedure, sec. 17.) In this section the author is speaking of appellate jurisdiction where the distinction between law and equity is rigidly maintained. He says: "Where a court of equity retains jurisdiction for one purpose, it will retain it for all purposes." The same author recognizes a difference in the two systems of appellate jurisdiction—that is, the one where the distinction between law and equity is maintained and, the other, where the two are blended. (Section 24.) In this last section the author says: "In some respects an appeal under the code system may be less comprehensive in its scope than an appeal under the old system," citing Judge Curtis, wherein he said that "it is evident that an appeal under the code system does not necessarily bring up the entire case." In view of the fact that the code system prevails in the Philippine Islands, blending legal and equitable rights and providing for one remedial system, our holding in the instant case is not in conflict with Elliott on Appellate Procedure.

It is also urged that the rule announced in the case of *Loeb vs. Columbia Township Trustees* (179 U. S., 472), and followed in the late case of *Boise Artesian Hot and Cold Water Co., Ltd. vs. Boise City* (230 U. S., 84), is directly opposed to our holding in the case under consideration. These two cases went to the Supreme Court of the United States on writs of error directly from the circuit courts in accordance with the provisions of section 5 of the Judiciary Act of March 3, 1891. This section provides "that appeals or writs of error may be taken from the district courts, or from the existing circuit courts, direct to the Supreme Court in the following cases: * * *." Here Congress maintains the distinction between "appeals" and "writs of error." In each case above cited the Supreme Court of the United States held that it not only had jurisdiction to review the constitutional questions, but also every other question properly arising. The court then proceeded to review all legal questions in those cases and not questions of fact, for the reason that the cases were before the court on writs of error. Even granting that the Supreme Court has jurisdiction under the Act above mentioned to review both questions of law and fact in cases appealed to that court, such holding would not be antagonistic to our views in the instant case for the reason that our power to review the facts touching the guilt or innocence of the defendants must be found in section 43 of General Orders No. 58. Our view is, as above indicated, that the framers of that section did not intend to confer upon this court that power. And all must admit that the military governor at the time he promulgated General Orders No. 58 had the power to limit or restrict the jurisdiction of the Supreme Court to statutory questions in cases of the character of the one under consideration.

Our ruling in the case at bar is fully supported by the adjudicated cases of this Supreme Court.

In the case of *Trinidad vs. Sweeney* (4 Phil. Rep., 531), the court said: "Upon the facts stated in the complaint the plaintiff is entitled to prosecute an appeal to this court; but upon such appeal the only question to be considered will be that of the validity or invalidity of the ordinance. We cannot review the evidence nor pass upon any other question of law which may appear in the record."

In *United States vs. Trinidad* (7 Phil. Rep., 325), the defendant was convicted in the municipal court of the city of Manila for violating a municipal ordinance. He appealed to the Court of First Instance, where he was again convicted. An appeal was allowed to the Supreme Court on the ground that the constitutionality or validity of the ordinance was drawn in question. On appeal the appellant insisted, among other things, that the trial court erred in deciding the case without first consulting with the two assessors. This court held the ordinance valid and, after quoting with approval the language used in the case of *Trinidad vs. Sweeney* (supra), said: "In cases where the appeal involves the constitutionality or validity of a statute, the disagreement of the assessors with the judgment of the Court of First Instance on appeal does not authorize this court to review the evidence, but its decision shall be confined only to the question of the validity of the Act or statute in question, as occurs in the present case."

In the case of *The United States vs. Espiritusanto* (23 Phil. Rep., 610), we examined the facts touching the due enactment of the ordinance. After so doing, the ordinance was held valid, but the facts touching the guilt or innocence of the appellant were not gone into.

In *United States vs. Ten Yu* (24 Phil. Rep., 1), the court used this language at page 12: "While we have discussed at length each of the assignments of error made by the appellants, nevertheless, the only question, in fact, presented by the appeal under the law, in the first instance, is whether or not the ordinance under which the defendants were sentenced is legal. Having concluded that said ordinance is legal and within the express powers of the Municipal Board to enact, the appeal must be dismissed, with costs in this instance against the appellants in equal parts."

In *United States vs. Abendan* (24 Phil. Rep., 165), the court, after quoting the testimony of a sanitary inspector and after holding the ordinance valid, said: "The evidence in the case, which is undisputed, is sufficient, in our judgment, to warrant the order complained of. It does not appear therefrom, the defendant himself having introduced substantially no proof in the case, that he was treated differently from other persons in that locality, or that he was required to do a thing that the others had not been required to do, or that he had in any way been discriminated against in the application of this ordinance to the facts of his case, or that its application was oppressive or unreasonable in this particular instance."

"The judgment appealed from is affirmed, with costs." Considering this language, together with that used in the opinion wherein the court said, "The sole question raised on this appeal is that presented by the claim of the appellant that the ordinance in question is unreasonable and oppressive," it is clear that the court did not intend to hold that it had authority to examine into the question of the guilt or innocence of the appellant.

In *United States vs. Co Chee*, (R. G. No. 8269, not reported) the appellants were convicted of a violation of Ordinance No. 152 of the city of Manila and, having drawn in question the validity of that ordinance, an appeal was allowed to this court. In disposing of this case the court said: "Precisely this question was presented in the case of the *United States vs. Ten Yu* (24 Phil. Rep., 1), just decided by this court, in which we held that said Ordinance No. 152 of the city of Manila was valid and constitutional. That case is on all fours with the present one, and the judgment of conviction of the Court of First Instance is hereby affirmed, with costs against the appellants, on the authority of that case."

No attempt was made to examine or pass upon the testimony touching the guilt or innocence of the appellants. In *United States vs. Tiu Un* (R. G., No. 7804); *United States vs. Gaw Kee* (R. G., No. 7816); *United States vs. Lim Cui* (R. G., No. 7815); *United States vs. See Kea* (R. G., No. 7828) ; *United States vs. Go Tin* (R. G., No. 7481);

United States vs. Sia Kim (R.G., No. 7716); United States vs. Lim Baey (R. G., No. 7915) ; United States vs. Li Tia (R. G., No. 7826); and United States vs. Tarn Bak (R. G., No. 7814), not reported, the appellants were convicted for a violation of Municipal Ordinance No. 152 of the city of Manila and, having drawn in question the validity of that ordinance, appeals were allowed to this court. This court, upon the authority of the United States vs. Ten Yu (*supra*), dismissed the appeals and directed the records to be returned to the court below for execution of the sentences.

Other cases might be cited, but we think the above are sufficient to show that we have followed in the instant case the uniform holding of this court for more than ten years. In fact, the court has not, since its organization, held in any case that it has the power to review the facts touching the guilt of an accused person in cases of the character of the one under consideration.

Some discussion has arisen in regard to the language we should use in the final disposition of cases wherein the statute or ordinance has been upheld. Sometimes we say, "The judgment is affirmed," and at other times we have said "the appeal is dismissed," etc. The result is the same and it is of little importance which expression we use. But, as the case comes to us on appeal for the purpose of testing the legality of the statute or ordinance upon which the judgment rests and as the judgment cannot be executed without the sanction of this court, it is perfectly legal to "affirm" or "reverse" the judgment as the case may be.

For the foregoing reasons the judgment appealed from is affirmed, with costs against the defendants. So ordered.

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

CONCURRING
ARAULLO, J.,

I agree to the judgment contained in the foregoing, for the reason that this question has already been settled by former decisions of this court.

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