

4 Phil. 531

[G.R. No. 2487. May 01, 1905]

**PABLO TRINIDAD, PETITIONER, VS. JOHN C. SWEENEY AND JAMES J. PETERSON,
RESPONDENTS.**

D E C I S I O N

WILLARD, J.:

As a general rule, the judgments of the Courts of First Instance are final in criminal cases appealed from courts of justices of the peace. (United States vs. Sy Tay, 1 Phil. Rep.,35.)

The same rule applies to the judgments of the municipal court of the city of Manila in such cases. (United States vs. Bian Jeng,1 1 Off. Gaz., 433.)

But in cases involving the validity or constitutionality of any law, there is such an appeal by virtue of the provisions of section 43 of General Orders, No. 58. That section is as follows:

“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 hereinafter 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.”

There is nothing in this section which requires the claim of

illegality to be specifically set up and claimed in the lower court as is required by section 709 of the Revised Statutes of the United States in cases of writs of error from the Supreme Court of the United States to the supreme court of a State. The ordinance of the city of Manila is a law within the meaning of section 43.

When an appeal to which a defendant is entitled is refused, mandamus is the proper remedy. (*Aleman vs. Sweeney*, 11 Off. Gaz., 857.)

The fact, if it be a fact, that if the plaintiff is imprisoned by virtue of this judgment he can, upon a writ of *habeas corpus*, attack the validity of the ordinance for the violation of which he was convicted is no bar to the prosecution of this suit of mandamus. (*Collins vs. Wolfe*, No. 2520.2)

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 can not review the evidence nor pass upon any other question of law which may appear in the record.

This case is before us upon a demurrer interposed by the defendant judge. The demurrer is overruled, and this defendant is given ten days from the date of this decision in which to answer. If no answer is filed within that period the clerk will, without further proceedings, enter a final judgment in this case in favor of the plaintiff, directing the defendant judge to admit an appeal in the said case and, if bail is given, restraining the defendant sheriff from imprisoning the plaintiff, Pablo Trinidad, until the final determination of such appeal.

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

