

2 Phil. 230

[ G.R. No. 1189. May 14, 1903 ]

**ALEJANDRO BAUTISTA, PETITIONER, VS. HON. ELIAS F. JOHNSON, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.**

**D E C I S I O N**

**LADD, J.:**

This is a petition for a mandamus to a judge of the Court of First Instance of Manila. The petitioner asks that the judge be required to allow him to withdraw an appeal taken by him from a judgment of one of the municipal courts of Manila, convicting him of an offense and imposing the penalty of imprisonment. At the time of the filing of the petition the appeal had been perfected; the action had been entered in the Court of First Instance; the petitioner had applied to the judge for leave to withdraw the appeal; this application had been denied; and the case has been tried in the Court of First Instance and the petitioner convicted and sentenced to a longer term of imprisonment than that imposed by the municipal court.

Section 42 of the Act to incorporate the city of Manila (No. 183), as amended by section 11 of Act No. 267, provides with reference to appeals from municipal courts that "a perfected appeal shall operate to vacate the judgment of the municipal court, and the action, when duly entered in the Court of First Instance, shall stand for the trial de nova upon its merits in accordance with the regular procedure in that court, as though the same had never been tried and had been originally there commenced."

The word "*vacate*" as applied to judgments means "*to annul*" "*to render void.*" (Bouvier, Law Dictionary, *subvoce.*) No stronger word could have been employed by the Commission in the law in question to signify the absolute extinction of the judgment as such. Used as it is there used, without any qualifying expressions, it can not be construed in the form of to *suspend*, or to *set aside temporarily*.

If, then, the right to withdraw the appeal in the Court of First Instance exists, as claimed by

the petitioner, it must follow that a defendant could in every case altogether escape the effect of a conviction in a municipal court by taking an appeal and then withdrawing it; for upon the withdrawal of the appeal there would be no existing judgment or proceeding against him in either court. This, of course, can not be the law. Clearly the defendant appealing from the municipal court to the Court of First Instance has no more control over the prosecution in the latter court than he would have had if it had been originally commenced there.

The petition is therefore denied.

*Willard and Mapa, JJ., concur.*

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*CONCURRING*

**COOPER, J.:**

I concur in the decision of the majority of the court, but base my conclusions upon the grounds that this is not a proper case for the issuance of writ of mandamus. The question of whether by perfecting the appeal from the municipal court to the Court of First Instance would have the effect,, in the event of the dismissal of the suit after appeal, of leaving no judgment, was a question calling for the exercise of judgment and discretion in its determination by the Court of First Instance, and being such this court will not compel it by mandamus to decide the question in any particular way.

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*DISSENTING*

**TORRES, J.:**

Is the right to withdraw an appeal taken against a decision of the municipal judge denied by Acts Nos. 183 and 267? I think not,

The right to withdraw from or waive an appeal from a judgment of a municipal judge is on the same footing as the right of appeal by a party interested in the suit, and more especially the defendant in a criminal case.

It is an inalienable right, inherent in the person of the defendant, and is of the same order as his right to plead guilty to the crime or misdemeanor. (Sees. 15 and 25 of General Orders, No.58.)

A person prosecuted for misdemeanor should not be at a disadvantage as compared with a person prosecuted for a crime. The latter, according to the laws in force which coexist with General Orders, No. 58, and Act No. 194, may withdraw an appeal against a judgment of conviction rendered in a prosecution for a crime, and may tacitly consent to the judgment, whether imposing life imprisonment or the minimum degree of imprisonment. This court on more than one occasion has allowed a convicted criminal to withdraw his appeal, and the judgment of the court below, by virtue of such withdrawal, immediately became final and could be executed.

Furthermore, there is no law or legal principle which prohibits the appellant from waiving his right and declining to sustain the appeal taken by him.

I am of the opinion that before the trial has commenced, or a hearing has been had before the judge of First Instance having jurisdiction over the appeal, the right of the appellant remains intact to withdraw the appeal, should he deem it more beneficial to his interest to do so.

The judgment of the municipal judge is vacated by the appeal taken against it, if the trial has commenced and hearing has been had on the appeal before the judge of First Instance. When the proceeding has reached this stage, I am of the opinion that a withdrawal could no longer be made, nor could there be a waiver of the right after submission of the case to the judge of First Instance. Under these circumstances the judgment of the municipal court would be considered vacated, because the charge is to be tried *de novo* and decided upon the pleadings and proofs presented, without taking into consideration the pleadings and proofs in the first instance—that is, in the municipal court. But, before the trial or the hearing, the writer is of the opinion that the appellant is entitled to waive or withdraw the appeal taken by him, and in such a case, then, the judgment appealed and which, by reason of such withdrawal or waiver, becomes final should be executed. Such a withdrawal implies the consent of the party in interest, who, while the appeal is still within his control, has waived his right to trial *de novo*. This, in the opinion of the writer, is the meaning which should be given to section 42 of Act No. 183 and to section 11 of Act No. 267.

In the case at bar, Alejandro Bautista withdrew his appeal before trial or hearing before the

judge of First Instance, the Honorable Mr. Johnson. While the proceedings are in this stage it is believed that the appeal has not yet produced the effect of vacating the judgment of the municipal court. No hearing has yet been had nor has trial commenced before the judge of First Instance, circumstances which terminate the option, and, therefore, the appeal having been withdrawn or its prosecution waived, the judgment of the municipal court subsists and should be executed.

The writer is, therefore, of the opinion that the petition of Alejandro Bautista should be granted.

*McDonough J.*, did not sit in this case.

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