

34 Phil. 127

[G.R. No. 10971. March 04, 1916]

**BEAUMONT & TENNEY, PLAINTIFFS AND APPELLANTS, VS. BERNARD
HERSTEIN, INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

This is a petition for a writ of injunction. Its purpose was to enjoin the defendant from discriminating in any manner against the plaintiffs or either of them, their servants or agents, in their dealing with the Bureau of Customs; and to prohibit the defendant and others from depriving the plaintiffs of any rights to which they are entitled as attorneys practising in the Philippine Islands; and from depriving the plaintiffs or either of them, from any of the privileges enjoyed by any other attorneys of the Philippine Islands, or by any other person transacting business of the same or similar class as that transacted or to be transacted by said plaintiffs, or as citizens of the United States, and that on final hearing the said injunction be made permanent; and for such other relief as may be deemed equitable, and for costs.

The petition was presented on the 23d of November, 1914. An order to show cause was issued by the court *a quo* on the same day.

On the 2d of December, 1914, the defendant answered said petition in which answer he admitted some of the allegations of the complaint, and denied generally and specifically the others.

Upon the issue thus presented the cause was brought on for trial. After hearing the respective parties, the injunction prayed for was denied. The plaintiffs, after presenting a motion for a rehearing which was denied, appealed to this court.

From an examination of the record, the following facts appear:

First. That the plaintiffs are attorneys-at-law practising their profession in the city of Manila. The defendant is the Insular Collector of Customs.

Second. That on October 13, 1914, H. V. Bamberger, an attorney in the employ of the plaintiffs, appeared before the defendant for the purpose of securing the release of a Chinaman, on bond. The defendant told Mr. Bamberger to put the request in writing. The defendant then made the statement that he wanted the plaintiff firm to transact all its business with him in writing, or words to that effect. Bamberger reported this conversation to the plaintiffs. The same day Beaumont wrote the defendant a letter, which is as follows (p. 22, record, Exhibit A):

“October 13, 1914.

“INSULAR COLLECTOR OF CUSTOMS,

“*Manila, P. I.*

“SIR: Mr. Bamberger states that he called upon you this morning in respect to a routine matter, to wit, the placing of bonds in the deportation cases of Chua Bu and Lee Ching, and that you stated to him that you desired to have all business with our firm transacted in writing. May we venture to inquire whether Mr. Bamberger has correctly reported the substance of your remarks, and if so, whether this is the general rule applicable to all firms of attorneys or only applies to the undersigned firm of Beaumont & Tenney?

“Very respectfully,

“BEAUMONT & TENNEY,
“HARTFORD BEAUMONT.”

Third. That the defendant replied to this letter on October 14, 1914. His reply is as follows (p. 37, record, Exhibit B):

“Messrs. BEAUMONT & TENNEY,

“*Attorneys-at-law, Manila, P. I.*

“GENTLEMEN: In reply to yours of October 13, relative to a statement made by the undersigned to Mr. Bamberger of your firm, to wit, that it is desirable to have all business with your firm in writing, I wish to say that the statement is substantially correct.

“This office desires to have a permanent record of all transactions, especially with firms inclined to take advantage of all technicalities and imperfections of a law, admittedly as difficult of administration as the Immigration Law is. This rule applies to all transactions and is not meant as a discrimination.

“Respectfully,

“B. HERSTEIN.”

Fourth. That on October 16, 1914, the plaintiffs sent another letter to the defendant, which is as follows (p. 36, record, Exhibit C):

“OCTOBER 16, 1914.

“INSULAR COLLECTOR OF CUSTOMS,

“Manila, P. I.

“SIR : Yours of October 14, answering ours of previous day, received.

“Please note that we inquired whether the rule which you announced to Mr. Bamberger applies to all attorneys or only to our firm, and that you have not returned a direct or responsive answer thereto.

“Kindly inform us what is meant by the term ‘firms inclined to take advantage of all technicalities and imperfections of (the immigration) law.’ Is our firm in your opinion within the group thus designated? And if so, what other firms are also included?

“Does the rule apply, as you state, to ‘all transactions’ or as you imply, only to immigration matters? Was it your intention to lay down a positive requirement or merely to state your opinion of what is generally ‘desirable?’ And in the latter case what are the limits within which you feel that we should confine ourselves in

dealing with you and your subordinates?

“Respectfully,

“BEAUMONT & TENNEY.”

Fifth. That the defendant made the following answer to the above letter (p. 35, record, Exhibit D) :

“[First indorsement.]

“OCTOBER 17, 1914. .

“Respectfully returned to Messrs. Beaumont & Tenney, calling attention to the letter of this office of October 14, which sufficiently explains the attitude of the undersigned. No further comment is called for.

“B. HERSTEIN,

“Insular Collector of Customs.”

Sixth. That the matter was then referred to the Secretary of Finance and Justice, by indorsement, with a request that the Secretary aid the plaintiffs in securing answers to the questions they had propounded. (Exhibit E, p. 31, record.) The correspondence was again referred to the defendant “for such further answer as in his judgment may and should be given.” (Exhibit F, p. 33.)

Seventh. That the defendant made answer, by indorsement, as follows (p. 32, Exhibit G) :

“[Fourth indorsement.]

“OCTOBER 29, 1914.

“Respectfully returned to the Secretary of Finance and Justice, calling attention to a letter addressed by this office to the Attorney-General through the office of the Secretary of Finance and Justice, dated October 23, having indirect bearing on the same subject.

“The record hereto attached speaks for itself and in the opinion of the undersigned the letters of Messrs. Beaumont & Tenney have been replied to, to the fullest extent warranted under the circumstances.

“B. HERSTEIN,

“Insular Collector of Customs.”

Eighth. That the correspondence was then returned to the plaintiffs. The plaintiffs, by indorsement, then referred the entire matter to the Governor-General (Exhibit I, p. 31) who again referred the matter to the Secretary of Finance and Justice. (Exhibit J, p. 25, record.) The Secretary of Finance and Justice returned the correspondence to the Governor-General with comment and expressed the opinion that the Collector of Customs could not be forced to answer the questions further than the answers he had already made. (Exhibit K, p. 24, record.)

The above was the status of the case at the time the present action was commenced.

The plaintiffs interpreted the letter of October 14th as depriving them of the privilege of transacting any business with the Bureau of Customs except in writing. The court found that the plaintiffs had never tried to put this interpretation to a test. *The defendant testified that he never intended to lay down such a rule, nor does it appear that the defendant ever attempted to enforce such a rule.* The court held that the evidence failed to show any probability of the defendant doing any act which the plaintiffs sought to restrain and therefore denied the writ.

The plaintiffs excepted to this decision and moved for a new trial which was denied. The plaintiffs now appeal.

The appellants make the following assignment of errors:

“First. The court erred in holding that the defendant’s declaration, that he did not intend to enforce the order complained of, was a sufficient reason for denying the injunction against the enforcement of the order.

“Second. The court erred in holding that the plaintiffs were not entitled to an injunction against the enforcement of the order complained of until they had

made an unsuccessful attempt to violate said order.

“Third. The court erred in holding that the intentions and threats of the defendant to enforce the order complained of were insufficient to warrant the issue of an injunction.

“Fourth. The court erred in denying the injunction prayed for and in denying any other relief to the plaintiffs.”

The first question is whether or not there was any order of any kind issued. Whether an injunction should issue at all depends upon the construction of the conversation between the defendant and Bamberger of the plaintiffs' firm. If this conversation cannot be construed as being an order by the defendant, compelling the plaintiffs to do all their business with the Bureau of Customs in writing, then this appeal must be dismissed. All of the subsequent proceedings are based upon this conversation and are interpretations of it.

Bamberger's version of this conversation is as follows:

“I proceeded upstairs to interview the Collector of Customs and we had a conversation, lasting about five minutes, as to what I wanted to get and the reason why I wanted to get these men out under bond, what connection the persons who employed me, Beaumont & Tenney, had with the case of the Chinamen whose release I was trying to secure. The Collector then called Mr. Amazeen, of the immigration division,” and we went over the details again of our relation with the case—I mean with the case of Lee Ching and Chua Bua or Chua Bu. I explained to the Collector I didn't know anything about the case; that my instructions had been merely to go down to the customhouse and try to obtain the release of the Chinamen in order to investigate their case, as we had not seen them then and didn't know what their case consisted of. The Collector then told me I should make application in writing; that he did not care to transact business 'with our firm,' his words were, 'except in writing;' I said, 'Very well, sir,' and I left the office and returned to the office where I am employed; I wrote out a letter, signed it, and presented it to the Collector and the Collector refused the request and stated his reasons.”

The defendant, Herstein, testified with regard to this conversation, as follows (p. 222,

record) :

“Q. I will ask you if you had an interview with Mr. Bamberger, representative of the plaintiff firm, in your office, on or about October 13, this year?—A. I did.

“Q. State briefly the substance of that interview.—A. As near as I can recollect it was on October 13; I had just arrived from outside; I believe I had been to the Ayuntamiento, and had hardly taken my seat when Mr. Bamberger came in and put up to me a request for a bond and he told me he did not know anything at all about it. I called up the chief of the immigration division, Mr. Amazeen (as I usually do in those cases), and had him explain to me the facts.

* * * * *

“I then told Mr. Bamberger that—‘I believe I considered the matter for a few moments, of that I am not positive—I had hardly been able to gather in the aspect of the case in its entirety, and I asked Mr. Bamberger just what his reason for this unusual request was, and he stated that it was necessary because Beaumont & Tenney wanted to communicate with a client;’ I told him, ‘Why can’t they go down and communicate with the client down at the detention station?’ He stated he did not know anything about it; then I told Mr. Bamberger: ‘if you want me to consider this request any further, you had better put it in writing; whenever they have requests like that Messrs. Beaumont & Tenney should always put it in writing.’

“Q. Did you receive a letter from the plaintiff firm subsequent to that interview?—A. I did.

“Q. That letter has been offered in evidence; what did that letter pertain to, Doctor?—A. It is particularly pertinent to that interview; I might also add that during the day of business—during the day’s business—requests of this nature will come up to me repeatedly to take action on the spur of the moment on certain cases which may later come up for action in the courts or elsewhere, and in order that they may be properly put on record, the attorneys, lawyers, customs brokers, and immigration brokers have invariably received the reply from me that, in order that I should understand the question fully, and consider the matter

fully, it is preferable to have these requests in writing; and the statement at the time to Mr. Bamberger was made and meant to apply to that individual case; I had no intention whatsoever to lay down a general order, but if it had been a case of Smith or Jones, I would just have properly and exactly stated that Smith or Jones should put a request like that in writing. * * *.”

On page 225 the defendant said:

“Q. You answered the letter of October 13 on October 14?—A. I did.

“Q. This letter has been introduced in evidence; I ask you to state to the court, Doctor, what you had in mind, what cases or motions you had in mind when you wrote that letter.—A. The first part of the letter, stating that, ‘It is desirable to have all business with your firm in writing’ is merely a repetition of the letter of Messrs. Beaumont & Tenney of October 13; it is not my wording; I took it to be their wording of the letter, especially the reference ‘with your firm;’ the statement was substantially correct, and, therefore, I stated this statement is substantially correct: I did not say it is absolutely correct, but just substantially; later on follows a second paragraph which is explanatory of the first paragraph, why it is desirable and necessary to have certain business transacted in writing and I put in, ‘and especially with firms inclined to take advantage of technicalities of laws,’ simply for the purpose of emphasizing the necessity that, where lawyers intend to bring the matter later on into court, that everything which has been transacted in relation to a certain case should be a matter of record; I had no intention whatsoever and even now, after reading these things several times, I can’t see it is meant as a reflection against the firm of Beaumont & Tenney; I certainly did not intend it so.

“Q. You subsequently wrote a communication, in which you commented upon this letter of October 13, and speaking of the limits in which you required a firm having requests for final action on your part, put in writing and made of record for the protection and interests of the Government as to ‘only such business as will come up for action by the Collector and eventually for action by the courts,’ did you not, Doctor?—A. I did.”

Neither from the testimony of Bamberger nor that of Herstein can the interpretation, which the plaintiffs give, be deduced. It cannot be interpreted as barring the plaintiffs from all business with the Bureau of Customs except in writing. Nor does it seem to be an *order*. Both the conversation and the subsequent letter spoke of what was “desirable.” It certainly cannot be construed as a threat to bar the plaintiffs from such business.

The Collector of Customs, in his discretion and as a part of the mechanical working of the office, may compel all *parties* to put everything in writing, if he thinks it is advisable or necessary to complete his record. He may also, in his discretion, require certain parties to put certain classes of requests, etc., in writing, while not requiring this of everyone. He might abuse this discretion to such an extent as to deprive attorneys and agents of their rights, but we do not believe he has done so in this case. His request was somewhat vague and general and the plaintiffs did not attempt to determine its extent or force. They were content, or at least preferred to put their own interpretation upon the alleged order.

There being no foundation in fact for the injunction prayed for, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Torres, Carson, and Trent, JJ., concur.

Moreland, J., concurs in the result.