44 Phil. 138

[G. R. No. 19628. December 04, 1922]

LICHAUCO & COMPANY, INC., PETITIONER, VS. SILVERIO APOSTOL, AS DIRECTOR OF AGRICULTURE, AND RAFAEL CORPUS, AS SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, RESPONDENTS.

D E C I S I O N

STREET, J.:

This is an original petition for the writs of mandamus and injunction, filed in this court by Lichauco & Company against the respondents, Silverio Apostol, as Director of Agriculture, and Rafael Corpus, as Secretary of Agriculture and Natural Resources. An order having been issued by this court requiring the respondents to appear and show cause why the relief prayed for should not be granted, the Attorney-General presented a return, in the nature of a demurrer, in their behalf; and the cause is now before us for the determination of the questions thus presented.

It is alleged in the complaint that the petitioner is a corporation duly organized under the laws of the Philippine Islands and that it has been engaged for several years in the business of importing carabao and other draft animals into the Philippine Islands and that it is now desirous of importing from Pnom-Pehn, in French Indo-China, a shipment of draft cattle and bovine cattle for the manufacture of serum but that the respondent Director of Agriculture refuses to admit said cattle, except upon the condition, stated in Administrative Order No. 21 of the Bureau of Agriculture, that said cattle shall have been immunized from rinderpest before embarcation at Pnom-Pehn. The petitioner therefore asks for an order requiring the respondents to admit the contemplated importation of cattle into the Islands and enjoining them from the enforcement of said administrative order in the future.

The petitioner asserts that under the first proviso to section 1762 of the Administrative Code, as amended by Act No. 3052 of the Philippine Legislature, it has “an absolute and unrestricted right to import carabao and other draft animals and bovine cattle for the

manufacture of serum from Pnom-Pehn, Indo-China, into the Philippine Islands" and that the respondents have no authority to impose upon the petitioner the restriction referred to above, requiring the immunization of the cattle before shipment.

The respondents, on the other hand, rely upon section 1770 of the Administrative Code and upon Administrative Order No. 21 of the Bureau of Agriculture, promulgated on July 29, 1922, by the Director of Agriculture, in relation with Department Order No. 6, promulgated on July 28, 1922, by the Secretary of Agriculture and Natural Resources, as supplying authority for the action taken.

Such portions of the laws above-mentioned as are material to the present controversy will be set out in full, preceded by section 1762 of the Administrative Code, as originally enacted, to which will be appended the pertinent parts of the orders referred to and the communication of the Director of Agriculture of August 31,1922.

1. *First paragraph of section 1762 of Administrative Code in original form:*

   "SEC. 1762. *Bringing of diseased animal into Islands forbidden.*—Except upon permission of the Director of Agriculture, with the approval of the head of Department first had, it shall be unlawful for any person knowingly to ship or otherwise bring into the Philippine Islands any animal suffering from, infected with, or dead of any dangerous communicable disease, or any effects pertaining to such animal which are liable to introduce such disease into the Philippine Islands."

2. *First paragraph of section 1762 of Administrative Code, as amended by Act No. 8052 of the Philippine Legislature:*

   "SEC. 1762. *Bringing of animals imported from foreign countries into the Philippine Islands*.—It shall be unlawful for any person or corporation to import, bring or introduce live cattle into the Philippine Islands from any foreign country. The Director of Agriculture may, with the approval of the head of the department first had, authorize the importation, bringing or introduction of various classes of thoroughbred cattle from foreign countries for breeding the same to the native cattle of these Islands, and such as may be necessary for the improvement of the breed, not to exceed five hundred head per annum: *Provided, however*, That the

Director of Agriculture shall in all cases permit the importation, bringing or introduction of draft cattle and bovine cattle for the manufacture of serum: *Provided, further*, That all live cattle from foreign countries the importation, bringing or introduction of which into the Islands is authorized by this Act, shall be submitted to regulations issued by the Director of Agriculture, with the approval of the head of the department, prior to authorizing its transfer to other provinces."

3. *Section 1770 of Administrative Code*:

"SEC. 1770. *Prohibition against bringing of animals from infected foreign countries*.—When the Department Head shall by general order declare that a dangerous communicable animal disease prevails in any foreign country, port, or place and that there is danger of spreading such disease by the importation of domestic animals therefrom, it shall be unlawful for any person knowingly to ship or bring into the Philippine Islands any such animal, animal effects, parts, or products from such place, unless the importation thereof shall be authorized under the regulations of the Bureau of Agriculture,"

4. *Department Order No. 6, promulgated on July 28, 1922, by Secretary of Agriculture and Natural Resources:*

"DEPARTMENT ORDER No. 6 } *Series of 1922*

"Owing to the fact that a dangerous communicable disease known as rinderpest exists in Hongkong, French Indo-China and British India, it is hereby declared, in accordance with the provisions of section 1770 of Act No. 2711 (Administrative Code of the Philippine Islands of 1917), that rinderpest prevails in said countries, and as there is danger of spreading such disease by the importation of cattle, carabaos, and pigs therefrom, it shall be unlawful for any person knowingly to ship or bring into the Philippine Islands any such animal, animal effects, parts, or products from Hongkong, French Indo-China and British India, unless the importation thereof shall be authorized under the regulations of the Bureau of Agriculture.

"The provisions of this order shall take effect on and after August 1, 1922."

5. *Administrative Order No. 21, of the Bureau of Agriculture, promulgated July 29, 1922, by the Director of Agriculture*:

"ADMINISTRATIVE ORDER NO. 21. }

"Re importation of cattle, carabaos, and pigs from French Indo-China, Hongkong and India.

"1. Pursuant to the provisions of Department Order No. 6, series of 1922, of the Department of Agriculture and Natural Resources, the present regulations of the Bureau of Agriculture governing the importation of livestock from French Indo-China and Hongkong are hereby amended to the effect that the importation of livestock of the species named in the aforementioned Department Order is hereby prohibited from French Indo-China, Hongkong and India. However, animals immunized against rinderpest, for which the importer before placing his order shall have obtained from the Director of Agriculture a written permit to import them from the above named countries, may be allowed entrance into the Philippine Islands.

"2. This order shall take effect on and after August 1, 1922."

6. *Communication of August 31, 192%, from the Acting Director of Agriculture to Faustino Lichauco (in part):*

"SIR: In reply to your application for permission to import from 300 to 400 carabaos immunized against rinderpest from Pnom-Pehn, French Indo-China, I have the honor to inform you that the permission is hereby granted, under the following conditions:

"1. Animals must be immunized by the simultaneous method before shipment. At least 10 c. c, of good virulent blood must be injected at the first injection simultaneously with the serum. Ten days after the simultaneous inoculation all non-reactors must receive another injection of not less than 10 c. c. of virulent blood (alone).

> "2. The immunization must be done by a veterinarian designated by the French Government for the purpose, who must issue a certificate stating the fact that the animal has been immunized according to the requirements in number 1 and it must not be embarked until ten days after the second injection of virulent blood.
>
> "* * * * * * *
>
> "Very respectfully,
>
> "SILVERIO APOSTOL,
> "*Acting Director of Agriculture*."

Upon glancing over the matter above collated, it will be seen at once that section 1770 of the Administrative Code on its face authorizes the action taken by the Secretary of Agriculture and Natural Resources in closing our ports (in the manner and to the extent indicated in Department Order No. 6) to the importation of cattle and carabao from French Indo-China, supposing of course, as everybody knows and as the petitioner does not deny, that the disease of rinderpest exists in that country.

It is claimed, however, that section 1762 of the Administrative Code, so far as it authorizes restrictions upon the importation of draft cattle and bovine cattle for the manufacture of serum, has been impliedly repealed by the amendatory Act No. 3052, which is of later enactment than the Administrative Code; and in this connection reliance is chiefly placed on the first proviso to section 1762, as amended by said Act No. 3052, which is in these words: "*Provided, however,* That the Director of Agriculture shall in all cases permit the importation, bringing or introduction of draft cattle and bovine cattle for the manufacture of serum." This then is the first and principal question in the case, namely, whether section 1770 has been repealed by implication, in so far as it relates to draft animals and bovine cattle for the manufacture of serum. We say repealed by *implication*, for it will be noted that that Act No. 3052 has no repealing clause, and it contains only one section, *i. e.*, that amending section 1762 of the Administrative Code.

We are of the opinion that the contention of the petitioner is untenable, for the reason that section 1762, as amended, is obviously of a general nature, while section 1770 deals with a particular contingency not made the subject of legislation in section 1762. Section 1770 is therefore not to be considered as inconsistent with section 1762, as amended; on the other hand, it must be treated as a special qualification of section 1762. Of course the two

provisions are different, in the sense that if section 1762, as amended, is considered alone, the cattle which the petitioner wishes to bring in can be imported without restriction, while if section 1770 is still in force the cattle, under the conditions stated in the petition, can be brought in only upon compliance with the requirements of Administrative Order No,. 21. But this difference between the practical effect of the two provisions does not make them inconsistent in the sense that the earlier provision (sec. 1770) should be deemed repealed by the amendatory Act (3052).

That section 1770 is special, in the sense of dealing with a special contingency not dealt with in section 1762, is readily apparent upon comparing the two provisions. Thus, we find that while section 1762 relates generally to the subject of the bringing of animals into the Islands at any time and from any place, section 1770 confers on the Department Head a special power to deal with the situation which arises when a dangerous communicable disease prevails in some defined foreign country, and the provision is intended to operate only so long as that situation continues. Section 1770 is the backbone of the power to enforce animal quarantine in these Islands in the special emergency therein contemplated; and if that section should be obliterated, the administrative authorities here would be powerless to protect the agricultural industry of the Islands from the spread of animal infection originating abroad.

We note that the argument for unrestricted importation extends only to the importation of cattle for draft purposes and bovine cattle for the manufacture of serum, leaving section 1770 theoretically in full effect as regards the importation of cattle for other purposes, as where they are imported for slaughter; but the importation of cattle for draft purposes is the principal thing, and unless that can be regulated under the conditions and to the extent attempted by the respondents in this case, the power given in section 1770 is obviously worthless.

In our opinion section 1762, as amended, and section 1770 must be construed *in pari materia* as harmonious parts of the law dealing with animal quarantine; and section 1762, as amended, can be given effect only in so far as it is not restricted by section 1770. Here, as always, the general must yield to the particular.

If the Congress of the United States should this day repeal the Chinese Exclusion Law so far as it affects these Islands, and should declare that all persons of Chinese nationality shall be at liberty to enter the Philippine Islands without restriction, would anybody suppose that such enactment would have the effect of abolishing the power to maintain quarantine

against any Chinese port where cholera or bubonic plague might hereafter be raging in epidemic form? Yet the question now before us is not fundamentally different from the one thus supposed.

The judicial precedents are conclusive to the effect that no implied repeal of a special provision of the character of the one now under consideration will result from the enactment of broader provision of a general nature. In other words, a general statute without negative words does not repeal a previous statute which is particular, even though the provisions of one be different from the other. (Rymer vs. Luzerne County, 12 L. R. A., 192; Petri vs. F. E. Creelman Lumber Co., 199 U. S., 487; 50 L. ed., 281.)

Wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in Its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken /to affect only the other parts of the statute to which it may properly apply. (Sir John Romilly, Master of the Rolls, in Pretty vs. Solly, 26 Beav., 606, 610.)

The additional words of qualification needed to harmonize a general and a prior special provision in the same statute should be added to the general provision, rather than to the special one. (Rodgers vs. United States, 185 U. S., 82; 46 L, ed., 816.)

Specific legislation upon a particular subject is not affected by a general law upon the same subject unless it clearly appears that the provisions of the two laws are so repugnant that the legislators must have intended by the later to modify or repeal the earlier legislation. The special act and the general law must stand together, the one as the law of the particular subject and the other as the general law of the land. (*Ex Parte* United States, 226 U. S., 420; 57 L. ed., 281; *Ex Parte* Crow Dog, 109 U. S., 556; 27 L. ed., 1030; Partee vs. St. Louis & S. F. R. Co., 204 Fed. Rep., 970.)

Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the Legislature is not to be presumed to have intended a conflict. (Crane vs. .Reeder and Reeder, 22 Mich., 322, 334; University of Utah vs. Richards, 77 Am. St. Rep., 928.)

It is well settled that repeals by implication are not to be favored. And where two statutes

cover, in whole or in part, the same matter, and are not absolutely irreconcilable, the duty of the court—no purpose to repeal being clearly expressed or indicated—is, if possible, to give effect to both. In other words, it must not be supposed that the Legislature intended by a later statute to repeal a prior one on the same subject, unless the last statute is so broad in its terms and so clear and explicit in its words as to show that it was intended to cover the whole subject, and therefore to displace the prior statute. (Frost vs. Wenie, 157 U. S., 46; 39 L. ed., 614, 619.)

As stated in the pages of the two most authoritative legal encyclopedias, the rule is that a prior legislative apt will not be impliedly repealed by a later act unless there is a plain, unavoidable and irreconcilable repugnancy between the two. If both acts can by any reasonable construction stand together, both will be sustained. (36 Cyc., 1074-1076; 26 Am. & Eng. Encyc. Law, 2d ed., 725-726.)

A masterly analysis of the decisions of the United States Courts pertinent to the matter now in hand will be found in the monographic article on "Statutes and Statutory Construction," written by Chas. C. Moore and prefixed as a General Introduction to Federal Statutes Annotated. The discussion there given is too lengthy to be here reproduced in full, but some of the observations of the learned author are so appropriate to the case before us that we cannot forego the temptation to include the same in this opinion. Says the writer: "The various provisions of an act should be read so that all may, if possible, have their due and conjoint effect without repugnancy or inconsistency. The sections of a code relative to any subject must be harmonized and to that end the letter of any section may sometimes be disregarded. But where absolute harmony between parts of a statute is demonstrably non-existent, the court must reject that one which is least in accord with the general plan of the whole, or if there be no such ground for choice between inharmonious sections, the later section being the last expression of the legislative mind must, in construction, vacate the former to the extent of the repugnancy." (1 Fed. Stat. Ann., 2d ed., 49-50.)

And speaking with reference to the rule by which special provisions are held to dominate over general provisions in the same or later laws, the author proceeds: " 'It is an old and familiar rule said Mr. Justice Lamar, 'that where there is in the same statute a particular enactment, and also a general one, which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.' And the Justice proceeded to apply that rule in the construction of a statute upon which there had been much ingenious

argument and a decided conflict of authority in the inferior federal courts. The statute was an act of Congress of 1876, declaring nonmailable 'every obscene * * * book, pamphlet, paper, writing, print, or other publication of an indecent character,' and other enumerated articles, and making it a misdemeanor to deposit any of them for mailing. In a prosecution under the act, the Circuit Court certified to the Supreme Court the following Question: Is the knowingly depositing in the mails of an obscene letter, inclosed in an envelope or wrapper upon which there is nothing but the name and address of the person to whom the letter is written, an offense within the act?' On behalf of the government it was contended that the word 'writing' comprehended such a letter, but the Supreme Court held otherwise. In the course of his argument in support of the view of the court, Justice Lamar pointed out that the statute, after enumerating what articles shall be nonmailable, adds a separate and distinct clause declaring that 'every letter *upon the envelope of which* * * * indecent, lewd, obscene, or lascivious delineations, epithets, terms, or language may be written or printed * * * shall not be conveyed in the mails,' and the person knowingly or willfully depositing the same in the mails 'shall be deemed guilty of a misdemeanor,' etc. 'This distinctly additional clause/ continued the Justice, 'specifically designating and describing the particular class of letters which shall be nonmailable, clearly limits the inhibitions of the statute to that class of letters alone whose indecent matter is exposed on the envelope.'" (1 Fed. Stat. Ann., 2d ed., 50-51; also at pp. 164-166.)

The cases relating to the subject of repeal by implication all proceed on the assumption that if the act of later date clearly reveals an intention on the part of the law-making power to abrogate the prior law, this intention must be given effect; but there must always be a sufficient revelation of this intention, and it has become an unbending rule of statutory construction that the intention to repeal a former law will not be imputed to the Legislature when it appears that the two statutes, or provisions, with reference to which the question arises bear to each other the relation of general to special. It is therefore idle to speculate whether in the case before us the Philippine Legislature may or may not have intended to modify or abrogate section 1770 of the Administrative Code at the time the amendment to section 1762 was enacted, for if any such intention was entertained, it was not revealed in a way that would justify a court in giving this intention effect. We may add, however, that, in the opinion of the majority of the Justices participating in this decision, the Legislature in amending section 1762 could not possibly have entertained a design to modify section 1770; for, as we have already shown, the abrogation of that provision, even as regards draft animals alone, would leave the animal industry of the Islands exposed to the danger incident to the unrestricted importation of infected animals from districts where rinderpest prevails.

The unreasonableness of this interpretation of the amendatory law alone supplies sufficient warrant for rejecting it. The Legislature could not possibly have intended to destroy the effectiveness of quarantine as regards imported animals.

Our conclusion then is that section 1770 of the Administrative Code remains in full force; and the determination of this question is we think necessarily fatal to the petitioner's case.

It is insisted, however, that even supposing section 1770 of the Administrative Code to be in force, nevertheless, the requirement of immunization at the port of embarcation is unreasonable, inasmuch as the immunization of the cattle at that port, under the supervision of the Government veterinarians of French Indo-China, is not unconditionally accepted as efficacious by the Philippine authorities, as shown by the fact that the latter further require tests to be made upon the arrival of the cattle here, consisting of inoculation with virulent blood of animals suffering from rinderpest—which involves additional expense and exposes the importer to the loss of his entire herd.

Considerations of this nature are we think more proper to be addressed to the authorities responsible for the regulations than to this court. About the principal fact that rinderpest exists in the regions referred to in Department Order No. 6, there is, and can be no dispute; and when the Department Head declared that the disease prevails in those regions and that there is danger of spreading it by the importation of cattle and carabao into this country, he was acting upon a matter within his province, and we are not disposed to review the conclusion.

It has been suggested that the regulative power vested in the Director of Agriculture under section 1770 of the Administrative Code with respect to the admission of cattle into the Philippine Islands attaches only when the importation has been effected; and that the said Director has no authority to dictate the measures to be taken by the importer before the cattle are embarked for transportation to these Islands. This contention, in our opinion, reflects a mistaken point of view with reference to the effect of the regulations; and the answer is to be found in the consideration that the regulation in question has prospective reference to the condition of the cattle upon their arrival here. In other words, the prior immunization of the cattle is made a condition precedent to the right to bring them in; as much as to say, that only animals conforming to the required type will be admitted. The importer is thus left at entire liberty in respect to the taking of the necessary measures to gain admittance for his cattle in our ports; and if he fails to do so, the penalty merely is that the cattle are not admitted.

Upon the whole we are of the opinion that the petition does not show sufficient ground for granting the writs of mandamus and injunction. The demurrer interposed thereto by the respondents in their return to the order to show cause, dated October 7, 1922, is therefore sustained, and the temporary restraining order heretofore promulgated in this cause, dated September 21, 1922, is dissolved; and unless within five days after notification hereof the petitioner shall so amend his petition as to show a sufficient cause of action, an order absolute will be entered, dismissing the same, with costs. So ordered.

Malcolm, Avanceña, Villamor, and *Ostrand, JJ.,* concur.

DISSENTING

JOHNS, *J.*, with whom concur ARAULLO, C. J., and ROMUALDEZ, J.,

The question involved is the meaning and construction of Act No. 3052 of the Legislature at its special session approved March 14, 1922, as it amends section 1762 of Act No. 2711, and to what extent, if any, it repeals or modifies section 1770 of Act No. 2711. It will be noted that section 1 of Act No. 3052 reads as follows:

> "Section seventeen hundred and sixty-two of Act Numbered Twenty-seven hundred and eleven, known as the Administrative Code, is hereby amended to read as follows:"

Hence, Act No. 3052 becomes, and is, a complete substitute for section 1762 of Act No. 2711, which reads as follows:

> "SEC. 1762. *Bringing of diseased animal into Islands forbidden.*—Except upon permission of the Director of Agriculture, with the approval of the head of Department first had, it shall be unlawful for any person knowingly to ship or

otherwise bring into the Philippine Islands any animal suffering from, infected with, or dead of any dangerous communicable disease, or any effects pertaining to such animal which are liable to introduce such disease into the Philippine Islands.

"Any such animal or its effects may be permitted by the Director of Agriculture, with the approval of the head of Department first had, to enter the Islands under such conditions as to quarantine, cremation, or other disposal as he may direct, or which shall be deemed by him sufficient to prevent the spread of any such disease."

As amended by Act No. 3052, section 1762 reads as follows:

"SEC. 1762. *Bringing of animals imported from foreign countries into the Philippine Islands.*—It shall be unlawful for any person or corporation to import, bring or introduce live cattle into the Philippine Islands from any foreign country. The Director of Agriculture may, with the approval of the head of the department first had, authorize the importation, bringing or introduction of various classes of thoroughbred cattle from foreign countries for breeding the same to the native cattle of these Islands, and such as may be necessary for the improvement of the breed, not to exceed five hundred head per annum: *Provided, however*, That the Director of Agriculture shall in all cases permit the importation, bringing or introduction of draft cattle and bovine cattle for the manufacture of serum: *Provided, further*, That all live cattle from foreign countries the importation, bringing or introduction of which into the Islands is authorized by this Act, shall be submitted to regulations issued by the Director of Agriculture, with the approval of the head of the department, prior to authorizing its transfer to other provinces.

"At the time of the approval of this Act, the Governor-General shall issue regulations and orders to provide against a raising of the price of both fresh and refrigerated meat. The Governor-General also may, by executive order, suspend this prohibition for a fixed period in case local conditions require it."

It was approved March 14, 1922.

It will be noted that the original Act was entitled:

> "*Bringing of diseased animal into Islands forbidden.*"

And that, as amended by Act No. 3052, it is now entitled:

> "*Bringing of animals imported from foreign countries into the Philippine Islands.*"

Of course, it must follow that any animal imported into the Philippine Islands must be brought here from a foreign country within the meaning of either Act. It will be noted that the word "diseased," as found in the title of the original Act, is not found in the title of the Act as amended. To my mind this is important, especially in view of the language used in the amended Act, which reads:

> "It shall be unlawful for any person or corporation to import, bring or introduce live cattle into the Philippine Islands from any foreign country."

Standing alone that language would be construed as an express prohibition against bringing cattle of any kind into the Philippine Islands "from any foreign country." The Act then says:

> "The Director of Agriculture may, with the approval of the head of the department first had, authorize the importation, bringing or introduction of various classes of thorough-bred cattle from foreign countries for breeding the same to the native cattle of these Islands, and such as may be necessary for the improvement of the breed, not to exceed five hundred head per annum."

By those provisions the Director of Agriculture, with the approval of the head of the department first had and obtained, may authorize the importation of thoroughbred cattle for breeding purposes not to exceed five hundred head per annum. To import such cattle, the shipper must obtain the consent of the Director of Agriculture, together with the approval "of the head of the department," and it must appear that the cattle "are thoroughbred cattle from foreign countries for breeding the same to the native cattle of these Islands," and that they are of the kind which will improve the breed of the native cattle, and the number must

not exceed five hundred head per annum. That is to say, by the express terms of the Act, thoroughbred cattle cannot be imported without the express consent and approval of the Director of Agriculture and the head of his department, and then only for specific purposes, and then in a limited quantity. Such provision will not admit of any other construction. Bearing those provisions and such construction in mind, the Act further says:

> "*Provided, however*, That the Director of Agriculture shall in all eases permit the importation, bringing or introduction of draft cattle and bovine cattle for the manufacture of serum."

Under the former provision of the Act thoroughbred cattle cannot be imported without the consent of the Director of Agriculture, "without the approval of the head of the department first had." But as to draft cattle and bovine cattle, the Act expressly provides:

> "That the Director of Agriculture shall in all cases permit the importation."

That is to say, as to thoroughbred cattle, he may or may not grant the permit, and then only in a limited number. But as to. draft cattle and bovine cattle for the manufacture of serum, he "shall in all cases permit the importation." As to such cattle it is not a matter of his choice or discretion. But the majority opinion holds that he is given that power and discretion under section 1770 of Act No. 2711, which reads as follows:

> "SEC. 1770. *Prohibition against bringing of animals from infected foreign countries*.—When the Department Head shall by general order declare that a dangerous communicable animal disease prevails in any foreign country, port, or place and that there is danger of spreading such disease by the importation of domestic animals therefrom, it shall be unlawful for any person" knowingly to ship or bring into the Philippine Islands any such animal, animal effects, parts, or products from such place, unless the importation thereof shall be authorized under the regulations of the Bureau of Agriculture."

It will be noted that section 1770 was enacted in 1917, and that Act No. 3052 was enacted March 14, 1922, five years after section 1770 became a law. It will also be noted that the rules and regulations here sought to be enforced were promulgated in July, 1922, under

section 1770, and four months after Act No. 3052 became a law. That is to say, that here you have rules and regulations of a subordinate department promulgated in July, 1922, that are in direct conflict with an Act of the Legislature approved March, 1922. But it is contended that one is a special and the other a general law, and that the two Acts should be construed *in pari materia*. That construction overlooks the fact that the force and effect of section 1770 of Act No. 2711 is founded upon section 1762, and that both are sections of the same general Act, and that when section 1762 is repealed, as it is, by Act No. 3052, in so far as it applies to draft and bovine cattle, there is nothing left upon which section 1770 can operate or to which it would apply. That is to say, that section 1762 and section 1770 are both sections of a general Act, and part of one and the same Act, and Act No. 3052 expressly repeals section 1762, and by doing so it repeals section 1770, in so far as it applies to draft and bovine cattle for the manufacture of serum.

For illustration: Suppose that section 1762 had never been amended by Act No. 3052, and that the Legislature enacted a law expressly repealing the whole section, how then would section 1770 operate, and to what would it apply, and how and where would it be in force and effect? There would be nothing to which it could apply. Section 1770 is absolutely dependent upon section 1762, without which it cannot be of any force or effect. Both of them are sections of the same general law, and one is dependent upon the other, hence, when you amend or repeal section 1762, you modify or repeal section 1770, in so far as it relates to, or is a part of section 1762.

Section 1770 is entitled:

> *"Prohibition against bringing of animals from infected foreign countries"*

Section 1762, as amended by Act No. 3052, is entitled:

> *"Bringing of animals imported from foreign countries into the Philippine Islands."*

Section 1762, as amended, recites:

> "That the Director of Agriculture shall in all cases permit the importation, etc."

The word “importation” has a well-defined meaning, and must have been used with reference to its legal meaning.

Words and Phrases, volume IV, page 3438, says:

> ” ‘The literal meaning of “importation” is to bring in with intent to land. It means a bringing into some port, harbor, or haven, with an intent to land the goods there. It takes place when the vessel arrives at a port of entry, intending there to discharge her cargo.’ (Kidd vs. Flagler [U. S.], 54 Fed., 367, 369; The Mary [U. S.], 16 Fed. Cas., 932, 933.)
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> “Importation is not the making entry of goods at the customhouse, but merely the bringing them into port; and the importation is complete before entry at the customhouse. (United States vs. Lyman [U. S.], 26 Fed. Gas., 1024, 1028; Perots vs. United States, 19 Fed. Cas., 258.)
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> “Act Cong. July 1, 1812, c. 112, providing a double duty on all goods, wares, and merchandise imported into the United States from and after the passage of the act, means not only that there shall be an arrival within the limits of the United States and of a collection district, but also within the limits of some port of entry. (Arnold vs. United States, 13 U. S. [9 Cranch], 104, 120; 3 L. ed., 671.)
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> “An article is not imported from a foreign country, within the meaning of the tariff laws, until it actually arrives at a port of entry of the United States, and the importation is governed by the law in force at the time of such arrival; and hence under the treaty of Paris, by which Spain ceded the Philippine Islands to the United States, and which took effect by the exchange of ratifications and the president’s proclamation on April 1, 1899, which repealed the existing tariff duties on goods brought from those islands, the goods, arriving at a port of entry of the United States from Philippine ports after its taking effect, were not subject to duty, although they were shipped before April 11th. (American Sugar Refining Co. vs. Bidwell [U. S.], 124 Fed., 677, 681.)”

Applying this definition, the legislative Act says:

> “That the Director of Agriculture shall in all cases permit the importation, etc.”

Giving to the word "importation," as used in the Act, its legal meaning, it is the express duty of the Director of Agriculture to permit the bringing or introduction of draft cattle and bovine cattle within the ports and harbors of the Philippine Islands when they are brought here with intent to land. That is the definition given to the word "importation" by both the Federal and the Supreme Courts of the United States. That is to say, that in all cases it is the express duty of the Director of Agriculture to permit the bringing or introduction of draft cattle and bovine cattle for the manufacture of serum within the jurisdiction, ports and harbors of the Philippine Islands. If that part of Act No. 3052 does not mean what it says, it does not mean anything. Again, it must be conceded that the Legislature of the Philippine Islands has no authority to make or enforce any law beyond its jurisdiction, and that it never intended to do so.

As the majority opinion states, the case is submitted to the court on the demurrer of the defendants to the complaint. Hence, all of the material allegations of the complaint are admitted. The defendants rely upon Department Order No. 6, as follows:

"DEPARTMENT ORDER NO. 6. 1922} Series of 1922

> "Owing to the fact that a dangerous communicable disease known as rinderpest exists in Hongkong, French Indo-China and British India, it is hereby declared, in accordance with the provisions of section 1770 of Act No. 2711 (Administrative Code of the Philippine Islands of 1917), that rinderpest prevails in said countries, and as there is danger of spreading such disease by the importation of cattle, carabaos, and pigs therefrom, it shall be unlawful for any person knowingly to ship or bring into the Philippine Islands any such animal, animal effects, parts, or products from Hongkong, French Indo-China and British India, unless the importation thereof shall be authorized under the regulations of the Bureau of Agriculture.
>
> "The provisions of this order shall take effect on and after August 1, 1922."

And Administrative Order No. 21, as follows:

"ADMINISTRATIVE ORDER No. 21.}

> *"Re importation of cattle, carabaos, and pigs from French Indo-China, Hongkong*

and India.

"1. Pursuant to the provisions of Department Order No. 6, series of 1922-, of the Department of Agriculture and Natural Resources, the present regulations of the Bureau of Agriculture governing the importation of livestock from French Indo-China and Hongkong are hereby amended to the effect that the importation of livestock of the species named in the aforementioned Department Order is hereby prohibited from French Indo-China, Hongkong, and India. However, animals immunized against rinderpest, for which the importer before placing his order shall have obtained from the Director of Agriculture a written permit to import them from the above named countries, may be allowed entrance into the Philippine Islands.

"2. This order shall take effect on and after August 1, 1922."

Hence, you have this situation. You have an Act of the Legislature which says:

"That the Director of Agriculture shall in all cases permit the importation, bringing or introduction of draft cattle and bovine cattle for the manufacture of serum," passed by the Legislature in March, 1922, and you have rules and regulations of a subordinate department of the Government which absolutely prohibits the importation of draft cattle and bovine cattle for the manufacture of serum, "unless the importation thereof shall be authorized under the regulations of the Bureau of Agriculture," and "that the importation of livestock of the species named in the aforementioned Department Order is hereby prohibited from French Indo-China, Hongkong and India," and where the importer, before placing his order in a foreign country, shall obtain a written permit from the Director of Agriculture, and then he may be allowed t6 import cattle into the Philippine Islands.

The question is thus squarely presented whether the rules and regulations of a subordinate department can overthrow and destroy the express provisions of a legislative Act. It will be noted that Act No. 3052 expressly provides that with certain limitations and reservations, and with the consent and approval of the Director of Agriculture and the head of the department, thoroughbred cattle may be brought into the Islands in limited number for

certain purposes. There are no such restrictions or limitations for the bringing in or introduction of draft and bovine cattle. Under that provision, the Legislature has said in express terms that the Director of Agriculture shall grant the permit in all cases. If it had been the purpose and intent of the Legislature to place any restrictions or limitations upon "the importation, bringing or introduction of draft cattle and bovine cattle for the manufacture of serum," it would have said so, as it did in the previous provision of the Act for the importation of thoroughbred cattle. But it is contended that, notwithstanding Act No. 3052, section 1770 is not repealed and remains in full force and effect.

Upon the question of where and how a statute is repealed, Lewis' Sutherland Statutory Construction is a recognized as Standard authority in all the courts". In section 247 (vol. I), the author says:

> "* * * therefore, the former law is constructively repealed, since it cannot be supposed that the law-making power intends to enact or continue in force laws which are contradictions. The repugnancy being ascertained, the later act or provision in date or position has full force, and displaces by repeal whatever in the precedent law is inconsistent with it.
>
> "Subsequent legislation repeals previous inconsistent legislation whether it expressly declares such repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions cannot stand together.
>
> " 'Where the later or revising statute clearly covers the whole subject-matter of antecedent acts, and it plainly appears to have been the purpose of the legislature to give expression in it to the whole law on the subject, the latter is held to be replaced by necessary implication.'
>
> "An affirmative enactment of a new rule implies a negative of whatever is not included, or is different; and if by the language used a thing is limited to be done in a particular form or manner, it includes a negative that it shall not be done otherwise. An intention will not be ascribed to the law-making power to establish conflicting and hostile systems upon the same subject, or to leave in force provisions of law by which the later will of the legislature may be thwarted and overthrown. Such a result would render legislation a useless and idle ceremony, and subject the law to the reproach of uncertainty and unintelligibility. (Sec. 249.)

> "Where a later act grants to an officer or tribunal a part of a larger power already possessed, and in terms which interpreted by themselves import a grant of all the power the grantee is intended to exercise, it repeals the prior act from which the larger power had been derived." (Sec. 250.)

In the leading case of Gorham vs. Luckett (6 B. Mon., 146), Marshall, J., says:

> "This is not a case of the re-enactment of a former law in the same words, or with additional provisions, nor of a regrant of a pre-existing power to the same or a greater extent. It is not a case of cumulative or additional power or right or remedy. Nor does it come within the rule that a subsequent affirmative statute does not repeal a previous one, which can only apply where both statutes can have effect. This is a formal and express grant of limited power to a depository which already had unlimited power. And it can have no effect, nor be ascribed to any other purpose, but that of limiting the extent of the pre-existing power. If certain provisions of two statutes are identical, the last need not be construed as repealing, but merely as continuing or re-affirming, the first, for which there might be various reasons. So, if a statute give a remedy, or provide that certain acts shall be sufficient for the attainment or security of certain objects, and a subsequent statute declare that a part of the same remedy or some of the same acts, or other acts entirely different, shall suffice for the accomplishment of the same object, here the latter act does not necessarily repeal the former, except so far as it may be expressed or implied in the former that the end shall be attained by no other mode but that which it prescribes. If there be no such restriction in the first, there is no conflict between them. Both may stand together with full effect, and the provisions of either may be pursued.
>
> "But if a subsequent statute requires the same, and also more than a former statute had made sufficient, this is in effect a repeal of so much of the former statute as declares the sufficiency of what it prescribes. And if the last act professes, or manifestly intends to regulate the whole subject to which it relates, it necessarily supersedes and repeals all former acts, so far as it differs from them in its prescriptions. The great object, then is, to ascertain the true interpretation of the last act. That being ascertained, the necessary consequence is, that the legislative intention thus deduced from it, must prevail over any prior

inconsistent intention to be deduced from a previous act.

> "* * * The difficulty, or rather the embarrassment in the case, arises from the fact that a previous law had given to the same grantee unlimited power on the same subject, and that this twentieth section makes no reference to the previous law, and contains no express words of restriction or change, but granting an express and limited power, is framed as if it were the first and only act on the subject. But do not these circumstances indicate that it is to be construed as if it were the only act on the subject? Or shall the first act, which is inferior in authority so far as they conflict, so far affect the construction of the last, as to deprive it of all effect? We say the last act must have effect according to its terms and its obvious intent. And as both cannot have full operation according to their terms and intent, the first and not the last act must yield."

Section 1770 was enacted in 1917, and Act No. 3052 in 1922, five years later, and the rules and regulations sought to be enforced are founded upon section 1770 and were promulgated about five months after Act No. 3052 became a law. The two sections are not only inconsistent, but there is a direct conflict between them as to the importation of draft and bovine cattle, especially as to the promulgated rules and regulations. The Legislature says that as to draft and bovine cattle, the permit shall be granted in all cases, and defendants say that we will not grant the permit under any circumstances, unless you comply with the rules and regulations that we have promulgated, which are impossible of performance, and are in direct conflict with Act No. 3052 of the Legislature.

As Lewis' Sutherland says:

> "* * * therefore, the former law is constructively repealed, since it cannot be supposed that the law-making power intends to enact or continue in force laws which are contradictions. The repugnancy being ascertained, the later act or provision in date or position has full force, and displaces by repeal whatever in the precedent law is inconsistent with it." And

> "Subsequent legislation repeals previous inconsistent legislation whether it expressly declares such repeal or not. In the nature of things it would be so, not only on the theory of intention, but because contradictions cannot stand together."

It must be conceded that any authority of the defendants to promulgate rules and regulations must be founded upon some legislative act, and that in the absence of legislative authority, the defendants have no right or license to promulgate any rules and regulations for any purpose. Hence, you have this situation; that the Legislature in positive and express language has said that "the Director of Agriculture shall in all cases permit the importation, bringing and introduction of draft cattle and bovine cattle for the manufacture of serum," and the defendants have said that we will not comply with the legislative act, you shall not import cattle until you comply with the rules and regulations which we have made and promulgated, which rules and regulations, in legal effect, absolutely prohibit the importation of such cattle for any purpose.

It is not for this court to legislate or to say whether or not Act No. 8052 is a good law or a bad law. Suffice it to say that it was enacted by the Legislature, which, to say the least, knows as much about the cattle business in the Philippine Islands as do the members of this court.

In its petition, the plaintiff offers to comply with all the port, harbor and quarantine rules and regulations of the Philippine Islands. But it is contended that they are not sufficient to prevent the spread of disease among the cattle. If not, they should be amended, and other and more strict quarantine regulations within the Philippine Islands should be adopted, and the Legislature has the power to absolutely prohibit the importation of cattle into the Islands for any and all purposes, which it did in Act No. 3052, except as to certain limitations and provisions, among which are "that in all cases the Director of Agriculture shall permit the importation, bringing and introduction of draft cattle and bovine cattle for the manufacture of serum."

Under the facts alleged, the petitioner has brought itself squarely within those provisions and the Director of Agriculture has denied him the permit which the Legislature says he must grant, and has imposed upon it the performance of impossible rules and regulations as a condition precedent to the granting of the permit.

Under the majority opinion, as to the importation of draft and bovine cattle, we have a government of rules and regulations promulgated by a subordinate branch of the government which are in direct conflict with the legislative Act.

By the majority opinion all that portion of Act No. 3052, which says "that the Director of Agriculture shall in all cases permit the importation, etc.," becomes a nullity and is

overruled by a subordinate branch of the Government. In legal effect, it holds that, in so far as there is a conflict between them, the provisions of section 1770 must prevail over the provisions of Act No. 3052. That is not good law. In so far as there is a conflict, Act No. 3052 should be construed as repealing section 1770, for the simple reason that Act No. 3052 became a law about five years after section 1770.

The majority opinion violates every canon of statutory construction. For such reasons, with all due respect to it, I vigorously dissent.

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