

RAMON ZARAGOZA, PLAINTIFF AND APPELLEE, VS. VICTOR ALFONSO, AS TREASURER OF THE CITY OF MANILA, DEFENDANT AND APPELLANT.*G.R. No. L-21414. September 13, 1924*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the City of Manila on or about the 25th day of October, 1922. Its purpose was to recover of the defendant the sum of P2,029.50, which the former had paid to the latter as a license fee under Ordinance No. 301 of the City of Manila, which sum was paid under protest. The license fee was required by the City of Manila for the construction of an arcade on a building located at Nos. 242-432 Rizal Avenue, in the district of Santa Cruz of the City of Manila. The said sum was paid on the 4th day of October, 1917. But the present action was not commenced until the 25th day of October, 1922, and not then, until the Supreme Court had decided on the 21st day of February, 1922, in the case of *Cuunjieng vs. Patstone* (42 Phil., 818), that said Ordinance No. 301 was illegal, null, and void.

The defendant interposed a general and special denial. In his general defense he denied each and all of the allegations of the complaint. In his special defense he alleged that the plaintiff had paid said sum voluntarily and spontaneously. Upon the issue thus presented, the Honorable Simplicio del Rosario, judge, after hearing the respective parties, decided: (a) That the plaintiff had paid said sum under protest, and (b) that his right to maintain the present action had not prescribed, and rendered a judgment in favor of the plaintiff and against the defendant for the sum of P2,029.50, without any finding as to costs. From that judgment the defendant appealed.

The question presented by the appellant is whether or not the payment of a license fee, under a simple protest of record, amounts to an involuntary payment, in this jurisdiction, which will justify an action to recover the same. It was proved during the trial that the payment in question was made under protest of record. While there is much conflict in the authorities upon what amounts to a voluntary or involuntary payment of money, as will be seen from the citation of authorities by the appellant and appellee, yet in this jurisdiction the rule has been established for many years, that, where an entity of the Government, without legal right, has demanded of a taxpayer the payment of an alleged tax, the taxpayer may pay the tax under protest of record and sue for the recovery thereof. It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy. The rule being established that, apart from special circumstances, he cannot interfere by injunction with the state's collection of its revenues, an action at law to recover back what he has paid is the alternative left; and where as is common, the State has a summary remedy—such as distress—and the party indicates by protest that he is yielding to what he cannot prevent, courts have been a little too slow to recognize the implied duress under which the payment is made. Where a citizen by refusing to pay an illegal tax is put at a serious disadvantage in the assertion of his legal rights with respect to such tax, justice requires that he should be at liberty to avoid that disadvantage by paying the tax and bringing suit for its recovery. (*Ayala de Roxas vs. City of Manila*, 27 Phil. 336; *Viuda e Hijos de Pedro P. Roxas vs. Rafferty*, 37 Phil., 957.)

Inasmuch as a rule has been established for years in this jurisdiction that a mere protest of record against the payment of an illegal demand, is sufficient to constitute an involuntary payment, and justifies an action for its recovery, we find no reason for invoking the doctrine announced in other jurisdictions. Inasmuch as the money in the present case was paid under protest of record, it was paid involuntarily, and the payor is entitled to bring an action for its recovery any time before the same is barred by the statutes of limitations.

In view of all of the foregoing, we are of the opinion, and so decide, that the judgment of the lower court should be and is hereby affirmed. And without any finding as to costs, it is so ordered.

Street, Malcolm, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

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