

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. SILVESTRE POMPEYA, DEFENDANT AND APPELLEE.

G. R. No. 10255. August 06, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 1st day of June, 1914, the acting prosecuting attorney of the Province of Iloilo presented the following complaint in the Court of First Instance of said province: "The undersigned fiscal charges Silvestre Pompeya with violation of the municipal ordinance of Iloilo, on the subject of patrol duty, Executive Order No. 1, series of 1914, based on section 40 (m) of the Municipal Code, in the following manner:

"That on or about March 20 of the current year, 1914, in the jurisdiction of the municipality of Iloilo, Province of Iloilo, Philippine Islands, the said accused did willfully, illegally, and criminally and without justifiable motive fail to render service on patrol duty; an act performed in violation of the law.

"That for this violation the said accused was sentenced by the justice of the peace of Iloilo to a fine of P2 and payment of the costs of the trial, from which judgment said accused appealed to the Court of First Instance."

Upon said complaint the defendant was duly arraigned. Upon arraignment he presented the following demurrer? "The defendant, through his undersigned attorneys, demurs to the complaint filed in this case on the ground that the acts charged therein do not constitute a crime."

In support of said demurrer, the defendant presented the following argument: "The municipal ordinance alleged to be violated is unconstitutional because it is repugnant to the Organic Act of the Philippines, which guarantees the liberty of the citizens."

Upon the issues thus presented, the Honorable J. S. Powell, judge, on the 22d day of August, 1914, after hearing the arguments of the respective parties, sustained said demurrer and ordered the dismissal of said complaint and the cancellation of the bond theretofore given, with costs de officio.

From the order sustaining the demurrer of the lower court, the prosecuting attorney appealed to this court. It appears from the demurrer that the defendant claims that the facts stated in the complaint are not sufficient to constitute a cause of action. In his argument in support of said demurrer it appears that the real basis of said demurrer was the fact that the ordinance upon which said complaint was based was unconstitutional, for the reason that it was contrary to the provisions of the Philippine Bill which guarantees liberty to the citizens of the Philippine Islands.

In this court the only question argued by the Attorney- General is whether or not the ordinance upon which said complaint was based (paragraph "m" of section 40 of the Municipal Code) which was adopted in accordance with the provisions of Act No. 1309 is constitutional. Section 40 of Act No. 82 (the Municipal Code) relates to the power of municipal councils. Act No. 1309 amends said section (section 40, paragraph "m") which reads as follows: " (m) With the approval of the provincial governor, when a province or municipality is infested with

ladrones or outlaws (the municipal council is empowered):

"1. To authorize the municipal president to require able-bodied male residents of the municipality, between the ages of eighteen and fifty years, to assist, for a period not exceeding five days in any one month, in apprehending ladrones, robbers, and other lawbreakers and suspicious characters, and to act as patrols for the protection of the municipality, not exceeding one day in each week. The failure, refusal, or neglect of any such able-bodied man to render promptly the service thus required shall be punishable by a fine not exceeding one hundred pesos or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court: Provided, That nothing herein contained shall authorize the municipal president to require such service of officers or men of the Army or Navy of the United States, civil employees of the United States Government, officers or employees of the Insular Government, or the officers or servants of companies or individuals engaged in the business of common carriers on sea or land, or priests, ministers of the gospel, physicians, practicante, druggists or practicante de farmacia actually engaged in business, or lawyers when actually engaged in court proceedings."

Said Act No. 1309 contains some other provisions which are not important in the consideration of the present case.

The question which we have to consider is whether or not the facts stated in the complaint are sufficient to show (a) a cause of action under the said law; and (b) whether or not said law is in violation of the provisions of the Philippine Bill in depriving citizens of their rights therein guaranteed.

We deem it advisable to consider the second question first.

It becomes important to ascertain the real purpose of said Act (No. 1309) in order to know whether it covers a subject upon which the United States Philippine Commission could legislate. A reading of said Act discloses (1) that it is an amendment of the general law (Act No. 82) for the organization of municipal government; (2) that it is an amendment of section 40 of said Act No. 82, by adding thereto paragraph "m;" (3) that said section 40 enumerates some of the powers conferred upon the municipal council; (4) that said amendment confers upon the council additional powers. The amendment empowers the municipal council, by ordinance, to authorize the president: (a) To require able-bodied male residents of the municipality, between the ages of 18 and 55 [50], to assist, for a period not exceeding five days in any one month, in apprehending ladrones, robbers, and other lawbreakers and suspicious characters, and to act as patrols for the protection of the municipality, not exceeding one day each week; (b) To require each householder to report certain facts, enumerated in said amendment.

The specific purpose of said amendment is to require each able-bodied male resident of the municipality, between the ages of 18 and 55 [50], as well as each householder, when so required by the president, to assist in the maintenance of peace and good order in the community by apprehending ladrones, etc., as well as by giving information of the existence of such persons in the locality. The amendment contains a punishment for those who may be called upon for such service, and who refuse to render the same.

Is there anything in the law, organic or otherwise, in force in the Philippine Islands, which prohibits the central Government, or any governmental entity connected therewith, from adopting or enacting rules and regulations for the maintenance of peace and good government? May not the people be called upon, when necessary, to assist, in any reasonable way, to rid the state and each community thereof, of disturbing elements? Do not individuals whose rights are protected by the Government, owe some duty to such, in protecting it against lawbreakers, and the disturbers of the quiet and peace? Are the sacred rights of the individual violated when he is called upon to render assistance for the protection of his protector, the Government, whether it be the local or general Government? Does the protection of the individual, the home, and the family, in civilized communities, under established government, depend solely and alone upon the individual? Does not the individual owe something to

his neighbor, in return for the protection which the law affords him against encroachment upon his rights, by those who might be inclined so to do? To answer these questions in the negative would, we believe, admit that the individual, in organized governments, in civilized society, where men are governed by law, does not enjoy the protection afforded to the individual by men in their most primitive relations.

If tradition may be relied upon, the primitive man, living in his tribal relations before the days of constitutions and states, enjoyed the security and assurance of assistance from his fellows when his quiet and peace were violated by malhechores. Even under the feudal system, a system of land holdings by the Teutonic nations of Europe in the eleventh, twelfth, and thirteenth centuries, the feudal lord exercised the right to call upon all his vassals of a certain age to assist in the protection of their individual and collective rights. (Book 2, Cooley's Blackstone's Commentaries, 44; 3 Kent's Commentaries, 487; Hall, Middle Ages; Maine, Ancient Law; Guizot, History of Civilization; Stubbs' Constitutional History of England; Chisholm vs. Georgia, 2 Dall. (U. S.), 419; DePeyster vs. Michael, 6 N. Y., 467.) Each vassal was obliged to render individual assistance in return for the protection afforded by all.

The feudal system was carried into Britain by William the Conqueror in the year 1085 with all of its ancient customs and usages.

We find in the days of the "hundreds," which meant a division of the state occupied by one hundred free men, the individual was liable to render service for the protection of all. (Book 3, Cooley's Blackstone's Commentaries, 160, 245, 293, 411.) In these "hundreds" the individual "hundredor," in case of the commission of a crime within the county or by one of the "hundredors," as against another "hundredor," was obliged to join the "hue and cry" (hutesium et clamor) in the pursuit of the felon. This purely customary ancient obligation was later made obligatory by statute. (Book 4, Cooley's Blackstone's Commentaries, 294; 3 Edward I., Chapter 9; 4 Edward I., Chapter 2; 13 Edward I., Chapters 1 and 4.)

Later the statute provided and directed: "That from thenceforth every county shall be so well kept, that, immediately upon robberies and felonies committed, fresh suit shall be made from town (pueblo) to town, and from county to county; and that "hue and cry" shall be raised upon the felons, and they that keep the town (pueblo) shall follow with "hue and cry," with all the town (pueblo), and the towns (pueblos) near; and so "hue and cry" shall be made from town (pueblo) to town, until they be taken and delivered to the sheriff."

Said statute further provided that in case the "hundredor" failed to join the "hue and cry" that it should be liable for the damages done by the malhechores. Later, by statute (27th Elizabeth, chapter 13) it was provided that no "hue and cry" would be sufficient unless it was made with both horsemen and footmen. The "hue and cry" might be raised by a justice of the peace, or by any peace officer, or by any private person who knew of the commission of the crime.

This ancient obligation of the individual to assist in the protection of the peace and good order of his community is still recognized in all well-organized governments in the "posse comitatus" (power of the county, poder del condado). (Book 1 Cooley's Blackstone's Commentaries, 343; Book 4, 122.) Under this power, those persons in the state, county, or town who were charged with the maintenance of peace and good order were bound, ex officio, to pursue and to take all persons who had violated the law. For that purpose they might command all the male inhabitants of a certain age to assist them. This power is called "posse comitatus" (power of the county). This was a right well recognized at common law. Act No. 1309 is a statutory recognition of such common-law right. Said Act attempts simply to designate the cases and the method when and by which the people of the town (pueblo) may be called upon to render assistance for the protection of the public and the preservation of peace and good order. It is an exercise of the police power of the state. Is there anything in the organic or statutory law

prohibiting the United States Philippine Commission from adopting the provisions contained in said Act No. 1309?

While the statement has its exceptions, we believe, generally speaking, that the United States Commission, and now the Philippine Legislature, may legislate and adopt laws upon all subjects not expressly prohibited by the Organic Law (Act of Congress of July 1, 1902) or expressly reserved to Congress. Congress did not attempt to say to the Philippine Legislature what laws it might adopt. Congress contented itself by expressly indicating what laws the Legislature should not adopt, with the requirement that all laws adopted should be reported to it, and with the implied reservation of the right to nullify such laws as might not meet with its approval.

Considering the Organic Act (Act of Congress of July 1, 1902) as the real constitution of the United States Government in the Philippine Islands, and its inhibitions upon the power of the Legislature, we believe an analogy may be drawn relating to the difference between the Constitution of the United States and the constitution of the different States, with reference to what laws may be adopted by the different States. While the statement needs much explanation, the general rule is that Congress has authority to legislate only upon the questions expressly stated in the Constitution of the United States, while the state legislature may legislate upon all questions, not expressly conferred upon Congress, nor prohibited in its constitution. In other words, an examination of the Constitution of the United States discloses the subject matter upon which Congress may legislate, while an examination of the constitutions of the different States must be made for the purpose of ascertaining upon what subjects the state legislature can not legislate. Stating the rule in another way—the Constitution of the United States permits Congress to legislate upon the following subjects; the constitutions of the States prohibit the state legislature from legislating upon the following subjects. Generally, then, the legislature of a State may adopt laws upon any question not expressly delegated to Congress by the Constitution of the United States or prohibited by the constitution of the particular State.

We think that is the rule which should be applied to the Philippine Legislature. The Philippine Legislature has power to legislate upon all subjects affecting the people of the Philippine Islands, which has not been delegated to Congress or expressly prohibited by said Organic Act. (*Gaspar vs. Molina*, 5 Phil. Rep., 197; *U. S. vs. Bull*, 15 Phil. Rep., 7.)

The right or power conferred upon the municipalities by Act No. 1309 falls within the police power of the state. (*U. S. vs. Ling Su Fan*, 10 Phil. Rep., 104.) Police power of the state has been variously defined. It has been defined as the power of government, inherent in every sovereign, and cannot be limited; (*License Cases*, 5 How. (U. S.), 483). The power vested in the legislature to make such laws as they shall judge to be for the good of the state and its subjects. (*Commonwealth vs. Alger*, 7 Cush. (Mass.), 53, 85). The power to govern men and things, extending to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state. (*Thorpe vs. Rutland, etc., Co.*, 27 Vt., 140, 149.) The authority to establish such rules and regulations for the conduct of all persons as may be conducive to the public interest. (*People vs. Budd*, 117 N. Y., 1, 14; *U. S. vs. Ling Su Fan*, *supra*.) Blackstone, in his valuable commentaries on the common law, defines police power as "the defenses, regulations, and domestic order of the country, whereby the inhabitants of a state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their respective stations." (4 Blackstone's Com., 162.)

The police power of the state may be said to embrace the whole system of internal regulation, by which the state seeks not only to preserve public order and to prevent offenses against the state, but also to establish, for the intercourse of citizen with citizen, those rules of good manners and good neighborhood, which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably

consistent, with a like enjoyment of the rights of others. The police power of the state includes not only the public health and safety, but also the public welfare, protection against impositions, and generally the public's best interest. It is so extensive and all pervading, that the courts refuse to lay down a general rule defining it, but decide each specific case on its own merits. (*Harding vs. People*, 32 L. R. A., 445.)

The police power of the state has been exercised in controlling and regulating private business, even to the extent of the destruction of the property of private persons, when the use of such property became a nuisance to the public health and convenience. (*Slaughter House Cases*, 16 Wal. (U. S.), 36; *Minnesota vs. Barber*, 136 U. S., 313; *Powell vs. Pennsylvania*, 127 U. S., 678; *Walling vs. People*, 116 U. S., 446; *U. S. vs. Ling Su Fan*, 10 Phil. Rep., 104.)

We are of the opinion, and so hold, that the power exercised under the provisions of Act No. 1309 falls within the police power of the state and that the state was fully authorized and justified in conferring the same upon the municipalities of the Philippine Islands, and that, therefore, the provisions of said Act are constitutional and not in violation nor in derogation of the rights of the persons affected thereby.

With reference to the first question presented by the appeal, relating to the sufficiency of the complaint, it will be noted that Act No. 1309 authorized the municipal governments to establish ordinances requiring (a) all able-bodied male residents, between the ages of 18 and 55 [50], and (b) all householders, under certain conditions, to do certain things.

It will also be noted that the law authorizing the president of the municipality to call upon persons, imposes certain conditions as prerequisites: (1) The person called upon to render such services must be an able-bodied male resident of the municipality; (2) he must be between the ages of 18 and 55 [50], and (3) certain conditions must exist requiring the services of such persons.

It will not be contended that a nonresident of the municipality would be liable for his refusal to obey the call of the president; neither can it be logically contended that one under the age of 18 or over the age of 55 [50] would incur the penalty of the law by his refusal to obey the command of the president. Moreover the persons liable for the service mentioned in the law cannot be called upon at the mere whim or caprice of the president. The conditions mentioned in law must exist. There must be some just and reasonable ground, at least sufficient in the mind of a reasonable man, before the president can call upon the persons for the service mentioned in the law. The law does not apply to all persons. The law does not apply to every condition. The law applies to special persons and special conditions.

A complaint based upon such a law, in order to be free from objection under a demurrer, must show that the person charged belongs to the class of persons to which the law is applicable. For example, under the Opium Law, certain persons are punishable criminally for having opium in their possession. The law permits certain persons to have opium in their possession. All possessors of opium are not liable under the law. A complaint, therefore, charging a person with the possession of opium, without alleging that he did not belong to the class which are permitted to possess it, would be objectionable under a demurrer, because all persons are not liable. The complaint must show that the one charged with the possession of the opium was not one of the persons who might legally possess opium. Suppose, for another example, that there was a law providing that all persons who performed manual labor on Sunday should be punished, with a provision that if such labor should be performed out of necessity, the person performing it would not be liable. In such a case, in the complaint, in order to show a good cause of action, it would be necessary to allege that the labor was not performed under necessity, in other words, the complaint, in order to be free from objection raised by a demurrer, must show that the person accused of the crime, in the absence of proof, is punishable under the law. One who performed labor under necessity

would not be liable. The complaints, in the foregoing examples, in the absence of an allegation which showed that the party accused did not belong to the exempted class, would not be good. In the absence of such negations, the courts would be unable to impose the penalty of the law, because, perchance, the defendant might belong to the exempt class. The complaint, in a criminal case, must state every fact necessary to make out an offense. (U. S. vs. Cook, 17 Wall. (U. S.), 168.) The complaint must show, on its face that, if the facts alleged are true, an offense has been committed. It must state explicitly and directly every fact and circumstance necessary to constitute an offense. If the statute exempts certain persons, or classes of persons, from liability, then the complaint should show that the person charged does not belong to that class.

Even admitting all of the facts stated in the complaint in the present case, the court would be unable to impose the punishment provided for by law, because it does not show (a) that the defendant was a male citizen of the municipality; (b) that he was an able-bodied citizen; (c) that he was not under 18 years of age nor over 55 [50]; nor (d) that conditions existed which justified the president of the municipality in calling upon him for the services mentioned in the law.

For all of the foregoing reasons, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

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