

**WALTER E. OLSEN & CO., PETITIONER, VS. BERNARD HERSTEIN,
AS THE INSULAR COLLECTOR OF CUSTOMS OF THE PHILIPPINE
ISLANDS, AND JAMES J. RAFFERTY, AS THE COLLECTOR OF
INTERNAL REVEN...**

G.R. No. 11138. December 15, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition to this court for a writ of mandamus directed to Bernard Herstein as Insular Collector of Customs and James J. Rafferty as Collector of Internal Revenue, requiring them "to furnish plaintiff the certificate covering: the origin and the certificate of origin, respectively, of the cigars destined for exportation from these Islands to the United States."

A demurrer was filed to the petition based on the ground that "the facts stated in said petition do not entitle the plaintiff to the relief demanded, in that it does not appear from the facts stated that the Insular Collector of Customs or the Collector of Internal Revenue has failed or refused to perform any duty incumbent upon either of said officers."

The question before us is that presented by the demurrer to the petition, or complaint, the proceeding to obtain a writ of mandamus being, in this jurisdiction, an "ordinary action."

It appears that the plaintiff, Walter E. Olsen & Co., a corporation, is a manufacturer and exporter of cigars composed of tobacco grown in the Philippine Islands. On or about the 16th day of July, 1915, this company applied to the Collector of Internal Revenue for a certificate covering the origin of a certain consignment of 10,000 cigars presented to the Collector at the time of the application, duly packed, as required by the regulations of the Bureau, in proper boxes of 100 cigars each, each box properly stamped with the United States internal revenue stamps required by law and the regulations of the Bureau of Internal Revenue, which cigars are known as "cortado," having straight instead of spiral wrappers and shaped somewhat like a truncated cone, which said cigars the company desired to introduced into the United States free of duty under the provisions of the Tariff Act of the United States. On such application plaintiff produced the statement required by the rules of the Bureau of Internal Revenue, which it offered to verify before the collector as required by the rules of the Bureau covering shipments of cigars, demonstrating that the cigars were entitled to free entry into the United States under the provisions of the Tariff Act of the United States relating to commerce with the Philippine Islands. The Collector of Internal Revenue refused and still refuses Jo issue a certificate covering the origin of the cigars on the ground, not that the material composing the cigars was not the product of the Philippine Islands, but that the cigars in question did not conform to a certain regulation relating to the exportation of Philippine cigars to the United States issued by the Collector of Internal Revenue on the 26th of January, 1915, providing that, after the expiration of a certain period, no certificate of origin would be issued by said Bureau for cigars which were not "standard," it being held by the Collector that the "cortado" cigars were not "well made" and, therefore, were "not

entitled to the standard mark" which a certificate of origin would place on them, the only cigars entitled to such certificate being those of the regular shape, having a spiral wrapper and with substantially the same diameter at each end. On the refusal of the Collector of Internal Revenue to issue the certificate prayed for, application was made to the Insular Collector of Customs for a certificate of origin of the material of the cigars, which request was refused on the ground that the certificate of the Collector of Internal Revenue covering the origin of the cigars had not been issued and presented with the application as required by the customs regulations.

The plaintiff alleges that the regulation of the Collector of Internal Revenue of January 26, 1915, above referred to, relative to the exportation of cigars to the United States, is "arbitrary, discriminating, illegal and void, and made without any authority of law, and is an attempt to legislate and an endeavor by the Collector of Internal Revenue to introduce provisions into the United States Tariff Acts governing these Islands utterly inconsistent and at variance with the laws therein expressed."

The complaint asserts that it is the duty of the Insular Collector of Customs "to furnish exporters in these Islands certificates of origin of cigars and other tobacco destined to the United States of America, to enable said merchandise to enter into the United States free of duty, provided that they have complied with the Acts of Congress of the United States of date of August 5, 1909, and October 3, 1913, respectively, known as the Tariff Acts, and with the provisions thereof relating to exports from the Philippine Islands to the United States; and provided that they have complied with the rules and regulations relating thereto not inconsistent with law, made and promulgated by the said Insular Collector of Customs of the Philippine Islands, and approved by the Secretary of Finance and Justice thereof."

The question presented for our determination in this case is whether or not, in connection with the issuance of "certificate covering the origin" and "certificate of origin" mentioned in the complaint, there rests on the Collector of Internal Revenue and the Insular Collector of Customs a duty the performance of which the courts will enforce by mandamus. For convenience we will, in this decision, use the phrase "certificate of origin" to describe both of the certificates above mentioned, there appearing to be, in essence, little difference between them.

Section 222 of the Code of Civil Procedure, which is the only authority in the Philippine Islands for the issuance of the writ of mandamus, provides: "When the complaint in an action in a Court of First Instance alleges that any inferior tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person, and the court, on trial, finds the allegations of the complain to be true, it may, if there is no other plain, speedy, and adequate remedy in the ordinary courts of law, render a judgment granting a peremptory order against the defendant, commanding him, immediately after the receipt of such order, or at some other specified time, to do the act required to be done to protect the rights of the plaintiff'."

Under this section the inquiry is narrowed to the determination of whether the Insular Collector of Customs and the Collector of Internal Revenue have neglected the performance of an act which the law specially enjoins as a duty resulting from their office or unlawfully excludes the plaintiff from the use and enjoyment of a right to which he is entitled and from which he is unlawfully precluded by them.

We are of the opinion that plaintiff's case as set out in the complaint is not one of those provided for by the section just quoted. Unlike the statutes of many of the States, our Code of Civil Procedure authorizes the issuance of a writ of mandamus in two classes of cases only, "(a) where an official unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from his office" and "(6) where he unlawfully excludes the plaintiff from the use and enjoyment of a right to which he is entitled and from which he is unlawfully precluded

by such official." We do not believe the plaintiff has shown itself entitled to the benefits of either of these provisions. Our attention has been called to no statute which requires either the Insular Collector of Customs or the Collector of Internal Revenue to issue a certificate of origin of the materials composing any class of cigars, or of any other Philippine product for that matter. We have examined all of the statutes which might have a bearing on this proceeding and in none of them have we found any provision placing any such duty on either of the officials named. The Tariff Act of October 3, 1913, entitled "The Tariff Act of October 3, 1913," does not lay any such duty on these officials, having only this to say with reference to the importation of tobacco from the Philippine Islands: "C. That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: Provided, That all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty: * * *"

Under this provision it is necessary, in the exportation of products of the Philippine Islands to the United States, to satisfy the customs officials of that country that the proposed importations are of the character described in that portion of the Act of Congress of October 3, 1913, above quoted. By virtue of this necessity, and pursuant to Executive Order No. 41 hereafter to be discussed, there has grown up a custom in the Philippine Islands dating from 1909 (the Tariff Act of August 5, 1909, having the same provision with respect to importations from the Philippine Islands as the Act of October 3, 1913), by virtue of which the Collector of Internal Revenue has issued and still issues to the manufacturers of cigars in the Philippine Islands a certificate covering the origin of the material composing the cigars which declares, in effect, that at least 80 per cent of the value of the material composing the cigars was or is the growth or product of the Philippine Islands. On this certificate the Insular Collector of Customs issued and still issues a certificate of similar character. These certificates are the evidence on which the customs officials in the United States act with respect to products imported from the Philippine Islands in determining whether they are dutiable or not. This custom was not based, as is clear from the quotation above made, on any provision of the Congressional Tariff Act of 1913 requiring the issuance of such certificate by any official, Federal or Insular. There is nothing in that act which imposes a duty on either the Insular Collector of Customs or the Collector of Internal Revenue with respect to certificates of origin relative to products or merchandise exported from the Philippine Islands with destination in the United States.

Nor was such or a similar duty imposed by any statute of the Philippine Islands. The duties of the Insular Collector of Customs are laid down in section 3 of Act No. 356, known as the Customs Administrative Act. A careful reading of that section, and indeed of the whole Act, produces the instant conviction that the duty of making a certificate of origin with respect to Philippine products is not imposed by that section or by any other portion of the Act. The same may be said with respect to the statute imposing duties on the Collector of Internal Revenue. There is nothing to be found in the Internal Revenue Act (No. 2339) which authorizes the Collector, much less lays on him the duty, to issue certificates of origin. While, as we have said above, it has been the custom to issue such certificates it was based on no statute either of the United States or of the Philippine Islands and was not adopted by virtue of any duty imposed on those officials by law. It arose from the fact that it was far easier for Philippine exporters to present to Philippine officials the evidence necessary to procure the admission of their exportations into the United States free of duty than to offer it to the customs officials of the United States. When an exporter in the Philippine Islands desired to export Philippine products to the United States it became necessary, either by virtue of some rule established by the United States customs authorities, or for some other reason as to which we are not definitely informed by the complaint, to send along with the exportation proof

satisfactory to the customs officials of the United States establishing the facts required by that portion of the Congressional Tariff Act of 1913 quoted hereinbefore as a condition to free entry into the United States. This evidence was supplied by the certificates of origin.

We deem it clear, therefore, that the custom of issuing certificates of origin of Philippine products about to be exported to the United States is based on no statute of the United States or of the Philippine Islands. The benefit conferred by the Congressional Tariff Act of 1913 on the Philippine exporter is the right to have his goods entered free of duty in the ports of the United States, provided they meet the requirements of that Act. This is the right and the only right which the exporter in the Philippine Islands has by virtue of that Act. The presentation of certificates of origin to the customs officials of the United States demonstrating that the article sought to be imported falls within the definition of the Tariff Act is not based on a right conferred by the Tariff Act but is simply a method by which such proof can be made. The Philippine exporter is not limited in his proof that his exported article falls within the provisions of the Tariff Act to the presentation of a certificate of origin. So far as appears in this case, he may present to the customs officials of the United States any other evidence which will establish the same fact; and, if such evidence is satisfactory to those officials, the importation will be entered free of duty although the importation is not accompanied by a certificate of origin. The Tariff Act sets out no particular method by which the fact that the article is a Philippine product must be established; and the exporter, under that Act, obtains no legal right to prove the fact of Philippine origin by any particular method or means. He simply gets the right to prove it. This being so, it must follow that he has no legal right to present a certificate of origin to the customs officials of the United States, nor has he a legal right to require the issuance of a certificate of origin from any official of the Philippine Islands. Not having been granted by the Act, no such right exists under the Act, and if no such right exists certainly it can not be enforced in any sort of action.

Immediately on the passage of the Tariff Act of 1909 the Governor-General of the Philippine Islands issued Executive Order No. 41, dated May 7, 1909. It dealt with that provision of the Tariff Act of 1909 which was repeated in the Tariff Act of 1913 which we have already quoted. It provides: "Upon the passage of a Congressional enactment authorizing the free entry into the United States of goods the product and growth of the Philippines, all customs and internal-revenue officials will consider themselves charged with the duty of preventing the fraudulent export for free entry into the United States of goods which are not the product and growth of the Philippines. In case the Insular Collector of Customs, the Collector of Internal Revenue, or their duly authorized representatives are satisfied that goods sought to be exported to the United States for free entry therein are really and truly the product and growth of the Philippines, they shall issue proper certificates to the exporter of such goods to that effect, and shall advise him that a duly authenticated copy of such certificates must accompany the goods to the United States and be presented to the proper customs officials at the port of entry in the United States.

"The Insular Auditor is hereby directed to transmit promptly at the close of each month, through this office, to the Secretary of the Treasury of the United States an abstract of such exports."

In pursuance of this order, Customs Administrative Circular No. 715, directed "to all collectors of customs and others concerned" was issued on the 1st of August, 1914. Paragraphs 1, 2 and 3 thereof are as follows:

"The following regulations prescribing the manner of complying with the provisions of section IV (e) of the United States Tariff Act of October 3, 1913, for the shipment for free entry in the United States of Philippine products, upon which no drawback of customs duties has been allowed, and which are for direct shipment, under a through bill of lading, from the Philippine Islands to the United States, are hereby published for the information and guidance of all concerned.

"The term 'Philippine products,' wherever used in these regulations, shall be held to mean 'articles the growth

or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value,' in the sense of this phrase as used in the aforecited section and Act.

"In accordance with the provisions of Executive Order No. 41, dated May 7, 1909, collectors of customs and all other customs officials will consider themselves charged with the duty of preventing fraudulent export for free entry into the United States.

"Upon the filing of export entries covering Philippine products, as defined in paragraph I, for direct shipment, under through bills of lading, to the United States for free entry therein, the collector of customs at the port of loading shall furnish the exporter, upon application therefor, a duly executed certificate of origin setting forth that the articles to be exported are in truth and in fact the growth product, or manufacture of the Philippine Islands, such certificates of origin to be on one of the following forms: * * *"

The other paragraphs of this circular touching the exportation of Philippine products are: "Par. IV. Exporters shall file with the collector of customs, prior to the execution of the certificates of origin, a true copy of the original bill of lading as evidence that the merchandise to be exported is for shipment to the United States on through bill of lading, said copy to be attached to the duplicate copy of the certificate of origin and forwarded therewith as provided for in paragraph X.

"Par. V. The certificate of origin provided for in paragraph III shall be required for each consignment of merchandise exported to the United States, as evidenced by each original bill of lading issued by the exporter, and shall have attached thereto a customs fee stamp in the sum of two pesos (F2) Philippine currency: Provided, That certificates of origin shall be issued free of charge in all cases in which the consignment of merchandise does not exceed in value fifty pesos (F50) Philippine currency."

"Par. VII. Certificates of origin covering cigars, cigarettes, manufactured tobacco, or leaf tobacco, shall not be executed by collectors of customs until there has been presented to them a sworn statement of the exporter covering such shipment of tobacco, accompanied by a certificate from the Collector of Internal Revenue, covering the origin of such tobacco and, in the case of manufactured tobacco, the grading of the same; nor shall certificates of origin be issued for consignments of manufactured tobacco unless such certificates, when presented by the exporter for approval, shall show by indorsement of the Collector of Internal Revenue that United States internal-revenue stamps have been attached to each and every package of said consignment as required by law and regulations."

"Par. X. The certificates of origin provided for in paragraph III, for tobacco, shall be executed and signed in triplicate, and for general merchandise, shall be executed and signed in duplicate, the original to be delivered to the exporter and by him forwarded to the consignee in the United States, and the duplicate to be immediately forwarded to the Insular Collector of Customs at Manila; the triplicate tobacco certificate being for file in the Bureau of Internal Revenue."

"Par. XII. Certificates of origin will not be issued for opium or preparations thereof, liquors, playing cards, or other articles (with the exception of manufactured tobacco) subject to United States internal-revenue tax; goods which are not Philippine products, as defined in paragraph I; and articles upon which drawback of customs duties has been claimed or allowed."

The Customs Administrative Act authorizes the Insular Collector of Customs to make proper rules and regulations for carrying into effect the statute creating and governing his department, while the Internal Revenue Law authorizes the Collector of Internal Revenue and imposes it as a duty to publish all regulations necessary to carry the Act into effect and to secure a harmonious and efficient administration of his branch of the service. The regulations of both the Insular Collector of Customs and the Collector of Internal Revenue become effective when approved by the heads of the Departments to which they belong and after they have been duly published.

Having seen that there is no statute, either of the United States or of the Philippine Islands, which places the duty on either the Insular Collector of Customs or the Collector of Internal Revenue of issuing certificates of origin of products of the Philippine Islands exported to the United States, the question remains whether Executive Order No. 41 and the regulations of the Insular Collector of Customs and the Collector of Internal Revenue referred to, issued thereunder, may be considered as laws within the meaning of the section of the Code of Civil Procedure authorizing the issuance of writs of mandamus.

In the Philippine Islands legal rights are conferred by statute. Unless a party can establish a right by virtue of some statute or law in force in the Philippine Islands, he has nothing on which he can base an action in any court. Until a legal right has been violated, no cause of action exists. Executive Order No. 41 confers no legal rights on anyone. It requires the adoption by the Insular Collector of Customs and the Collector of Internal Revenue of such rules and regulations as will insure that the Government of the United States will not be defrauded by a Philippine exporter who, by manufactured evidence or otherwise, may attempt to introduce into the United States free of duty articles which are not the product of the Philippine Islands and which do not fall within the provisions of the Tariff Act of 1913; and to that end it lays on the officials named the duty of ascertaining whether articles exported from the Philippine Islands to the United States are such that they may be lawfully imported into the United States free of duty under the Tariff Act. It is true that, while protecting the United States against fraud, the executive order referred to greatly conveniences Philippine exporters by offering to them the opportunity to make the proof which will be required by the customs officials of the United States. It permits them, as we have already seen, in effect, to make proof in the Philippine Islands which they would otherwise be required to make in the United States. It presents to them an opportunity, a very valuable opportunity, which they would not have had if the order had not been promulgated. But while it does this, it does not confer a legal right, a right on which an action in a court of law may be predicated, or one which may be enforced against the officials charged with the formulation of the required evidence by any process known to the law.

The matter before us may be looked at from another point of view. Executive Order No. 41 is nothing more or less than a command from a superior to an inferior. It creates no relation except between the official who issues it and the official who receives it. Such orders, whether executive or departmental, have for their object simply the efficient and economical administration of the affairs of the department to which or in which they are issued in accordance with the law governing the subject-matter. They are administrative in their nature and do not pass beyond the limits of the department to which they are directed or in which they are published, and, therefore, create no rights in third persons. They are based on, and are the product of, a relationship in which power is their source and obedience their object. Disobedience to or deviation from such an order can be punished only by the power which issued it; and, if that power fails to administer the corrective, then the disobedience goes unpunished. In that relationship no third person or official may intervene, not even the courts. Such orders may be very temporary, they being subject to instant revocation or modification by the power which published them. Their very nature, as determined by the relationship which produced them, demonstrates clearly the impossibility of any other person enforcing them except the one who created them. An attempt on the part of the courts to enforce such orders would result not only in confusion but, substantially, in departmental anarchy also. The enforcement of such an order, and the punishment which follows disobedience thereof, being at the will of the superior who issued it, instant conflict between him and the courts would be the necessary result of an effort on the part of the courts to enforce it. If courts can enforce, they can punish for disobedience; and what that punishment shall be and what form it will take, whether fine or imprisonment, or both, rests exclusively with them. The intervention of the courts would thus produce this situation: The official who issued the order and upon whom alone and exclusively rests the responsibility for the due, orderly and efficient administration of his department is not permitted to determine whether the order has been fulfilled or violated, or, if there is

disobedience or violation, how or when it shall be punished. Indeed, he might be deprived of a number of his subordinates by reason of jail sentences imposed by the courts for refusal to comply with their orders, and for reasons which the official who issued the order might not think sufficient to justify any punishment at all. The most serious results would almost necessarily follow if the courts should undertake to compel the execution of the orders or the rules and regulations of any department of the government except, perhaps, that in which the courts are supreme. Moreover, if the courts should enter that field of activity, there would be great difficulty in finding a stopping place. If they may enforce the orders of the Governor-General directed to the Bureaus of Custom and Internal Revenue, why not proceed and enforce all other executive orders, rules and regulations in all branches of the Government? Certainly the courts should confine themselves to the enforcement of legal and equitable rights, leaving the administrative affairs of the government to administrative officials.

Taking as admitted all of the material allegations of the Complaint, as we have taken them under the demurrer, the plaintiff is not entitled to the relief prayed for. Its remedy lies with the superior power which issued the order which is sought to be enforced.

The demurrer is sustained and the plaintiff given 5 days in which to amend its complaint. In case an amendment is not made within that time, the complaint will be dismissed on the merits. So ordered.

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

Johnson, J., dissents.

Demurrer sustained; complaint dismissed unless amended.

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