

L. S. MOON & CO., PLAINTIFF AND APPELLANT, VS. HONORABLE FRANCIS BURTON HARRISON, GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS, HONORABLE DIONISIO JAKOALEM, SECRETARY OF COMMERCE...

G. R. No. 17226. March 01, 1922

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STATEMENT

The complaint alleges that the plaintiff and appellant "is a duly registered partnership, domiciled and doing business in Manila."

"That the Hon. Francis Burton Harrison is the duly appointed, qualified and acting Governor-General of the Philippine Islands, and, as such, its Chief Executive; that the Hon. Dionisio Jakosalem is the duly appointed, qualified and acting Secretary of Commerce and Communications and the official designated by executive order of the said Governor-General as the executive in charge of rice, its sale and distribution in the Philippine Islands; that the said Justo Lukban is the duly appointed, qualified and acting Mayor of the city of Manila, and, as such, designated by the said Governor-General and Secretary of Commerce and Communications as their assistant in charge for the city of Manila of rice, its sale and distribution.

"That on September 24, the plaintiff was the owner of 2,330 1/2 kilos of rice, No. 1 quality, imported from Siam at a cost to plaintiff of P26.32, Philippine currency, per cavan, and 150 cavans of glutinous rice imported from Hongkong on the 14th day of July, 1919, at a cost of P22.25 per cavan; that the said rice at the time of its purchase was bought in the open market and at the then prevailing market prices.

"That defendants, pursuant to Act No. 2868 of the Philippine Legislature and pursuant to Executive Orders Nos. 56 and 67 issued by authority of said Act, have seized the said 2,330 1/2 kilos of Siam rice of plaintiff and deprived him of it, "for the purpose of distribution to the public at large; that said seizure was made without compensation to plaintiff, although defendants have promised to pay therefor at the rate of P16.25, Philippine currency, a cavan and no more, which price is below the reasonable value of the rice and is unjust; that payment at said rate does not constitute just compensation and a seizure under the circumstances alleged constitutes a confiscation of private property contrary to the fundamental and organic law of the Philippine Islands and an invasion of those constitutional rights that no one may be deprived of his property except by due process of law and with just compensation; that the just and reasonable value of the rice seized as aforesaid in Manila at the time of said seizure was with respect to the Siam rice mentioned P26.32 per cavan.

"That so much of said Act No. 2868 and its dependant Executive Orders that fix an arbitrary maximum selling price for rice and corn is unconstitutional and void as being in contravention of the Constitution of the United States and the Jones Bill, in so far as they guarantee to individuals the right to own and dispose of lawful property as they please and guarantee that the same may not be taken without due process of law and just compensation."

That in so far as Act No. 2868 purports to make it a crime to sell rice above the maximum price fixed by Executive Orders, it is unconstitutional and an invasion of property rights guaranteed by the Jones Bill, and that

defendants threaten prosecution for each violation.

It is further alleged that the action is brought on behalf of certain firms and generally on behalf of all rice importers, and that the enforcement of the provisions of Act No. 2868 would result in a great multiplicity of civil and criminal actions, and that this case is one of common and general interest affecting alike all dealers and importers of rice and corn, and that the reasonable price of the rice seized and confiscated is P26.25 per cavan. Plaintiff prays judgment as follows:

First. That defendants, their subordinates, agents, attorneys and employees be enjoined from further seizure of rice stocks.

Second. That defendants be ordered to return stocks seized as alleged or in lieu thereof pay to the owners a just and reasonable compensation therefor as may be fixed by this court.

Third. That so much of Act No. 2868 as permits the fixing of a maximum sale price for rice and corn and provides for the punishment of infractions of said law be declared unconstitutional and its enforcement enjoined.

Fourth, For such other and further relief as to this court may seem just and proper; to which the defendants filed the following demurrer:

- The court has no jurisdiction of the subject of the action, because—

(1) The court has no jurisdiction to control by injunction the official acts of the Governor-General, and

(2) This is in effect a suit against the State.

- There is a misjoinder of parties plaintiff, because, upon the facts alleged in the complaint, the plaintiff L. S. Moon & Co. has no right to sue on behalf of others not named in the complaint.

- The complaint does not state facts sufficient to constitute a cause of action, because—

(1) Act No. 2868 of the Philippine Legislature is constitutional, in that its enactment was a legitimate exercise of the police power of the State ;

(2) The facts stated in the complaint do not entitle the plaintiffs to the relief demanded, in that—

(a) Plaintiffs have another adequate remedy at law;

(b) The court has no jurisdiction to control by injunction the official acts of the Governor-General;

(c) "Plaintiff prays an injunction against the enforcement of a criminal statute upon the ground that it is unconstitutional ; but the constitutionality of a criminal statute may not properly be determined in an action against the Chief Executive for injunction, to prevent its enforcement. The validity of a criminal statute may be determined in a criminal action for an alleged violation thereof;" and

(d) "The action is against the defendants in their respective official capacities, and no facts are alleged which, if proved, would authorize a personal judgment against defendants for the value of the rice seized by them in their official capacities pursuant to a statute, even though the statute be unconstitutional, and the law does not authorize a money judgment against these defendants as public officials by reason of acts performed by them in their official capacities."

- The complaint is, upon its face, ambiguous, un intelligible and uncertain, particularly in the following respect, to wit: "* * * Plaintiff pleads irreparable injury by reason of the official acts of the defendants, and yet prays

judgment against them for the return of the rice 'or in lieu thereof pay to the owners a just and reasonable compensation therefor as may be fixed by this court.' "

Wherefore, defendants pray that the complaint be dismissed, with costs.

The trial court sustained the demurrer upon the second, third, and fourth grounds, and overruled it as to the first, to which ruling the plaintiff duly excepted.

October 8, 1920, the court dismissed the action, to which the plaintiff duly excepted and appealed to this court, assigning the following errors:

- The lower court erred in sustaining the second ground of demurrer to the second amended complaint to the effect that there was a misjoinder of parties plaintiff.
- The lower court erred in sustaining the third ground of demurrer to the second amended complaint to the effect that the complaint did not state facts sufficient to constitute a cause of action.
- The lower court erred in sustaining the fourth ground of demurrer to the second amended complaint to the effect that the complaint was ambiguous, unintelligible and uncertain.
- The lower court erred in not holding the acts complained of as an illegal invasion of private rights and the Act (No. 2868) authorizing them as unconstitutional.
- The lower court erred in dismissing the action without first having had a trial on the merits.

Johns, J.:

The complaint is against "Honorable Francis Burton Harrison as Governor-General of the Philippine Islands, Honorable Dionisio Jakosalem as Secretary of Commerce and Communications, and Honorable Justo Lukban as Mayor of the city of Manila, defendants," and it is specifically alleged "that the Hon. Dionisio Jakosalem is the duly appointed, qualified and acting Secretary of Commerce and Communications and the official designated by executive order of the said Governor-General as the executive in charge of rice, its sale and distribution in the Philippine Islands; that the said Justo Lukban is the duly appointed, qualified and acting Mayor of the city of Manila, and, as such, designated by the said Governor-General and Secretary of Commerce and Communications as their assistant in charge for the city of Manila of rice, its sale and distribution."

That is to say, as to the acts claimed to have been committed by the defendants Jakosalem and Lukban, it is specifically alleged that they were under and by virtue of the orders and instructions of the Governor-General, and that in the commission of the alleged acts, they were simply obeying the Governor-General, who was their superior officer.

At the time of their commission and the filing of the complaint, Honorable Francis Burton Harrison was the duly appointed, qualified and acting Governor-General of the Philippine Islands. This court will take judicial knowledge of the fact that he no longer holds that position, and that for some time it has been held by the Honorable Leonard Wood.

The complaint is against the Honorable Francis Burton Harrison as Governor-General of the Philippine Islands,

and is not against him as a citizen or private person. No motion has been filed for a substitution of parties, and no order of substitution has been made. Hence, you have a case pending against defendants who were acting under the orders of a Governor-General, who has ceased to be Governor-General. The complaint prays "that the defendants, their, subordinates, agents, attorneys and employees be enjoined from further seizure of rice stocks." Upon that branch of the case, an injunction against the defendants has become, and is now, a moot question. The action is against the Governor-General in his official capacity, and he no longer holds that position. The alleged acts of Jakosalem and Lukban were committed by them as agents and servants of the Governor-General. It must follow that the plaintiff is not entitled to an injunction against the defendants. A restraining order as to them, would be vain and useless.

The complaint alleges, in substance, that the 2,330 1/2 kilos of rice was of the market value and reasonably worth P26.32, Philippine currency, per cavan, and that the defendants seized the rice and took it away from the plaintiff, "for the purpose of distribution to the public at large," and that they have promised to pay him P16.25, Philippine currency, a cavan, and are not willing to pay any more, and that the seizure was a confiscation of private property contrary to the fundamental and organic law of the Philippine Islands, and in violation of a constitutional right. The complaint alleges that the acts were committed under Act No. 2868 of the Philippine Legislature, and pursuant to Executive Orders Nos. 56 and 67 issued by authority of said Act.

Section 1 of the Act says:

"The Governor-General is hereby authorized, whenever, for any cause, conditions arise resulting in an extraordinary rise in the price of palay, rice or corn, to issue and promulgate, with the consent of the Council of State, temporary rules and emergency measures for carrying out the purposes of this Act, to wit:

"(a) To prevent the monopoly and hoarding of, and speculation in, palay, rice or corn.

"(b) To establish and maintain a government control of the distribution or sale of the commodities referred to or have such distribution or sale made by the Government itself.

"(c) To fix, from time to time, the quantities of palay, rice or corn that a company or individual may acquire, and the maximum sale price that the industrial or merchant may demand.

"(d) To purchase, if necessary, through any Government Department or Bureau or through any company established by the Government, or through any other agency that the Government may designate, the amounts of rice, palay or corn that may be necessary for distribution and resale, preferably and as far as possible at the centers of production.

* * * * *

"SEC. 7. At any time that the Governor-General, with the consent of the Council of State, shall consider that the public interest requires the application of the provisions of this Act, he shall so declare by proclamation, and any provisions of other laws inconsistent herewith shall from then on be temporarily suspended."

From the pleadings, we must assume that in the commission of the alleged acts, the Governor-General was acting in his official capacity, and was engaged in the performance of a duty enjoined upon him by the Legislature of the Philippine Islands. It is now contended that the law in question is unconstitutional and void. At the time of the alleged acts, he was exercising the discretionary power which was vested in him as Governor-General. Whatever may be the rule as to the personal liability of an Executive, after a law has been finally declared unconstitutional, no court has ever held and no final decision will ever be found holding an Executive personally liable in damages for the exercise of a discretionary power under a law before it has been held unconstitutional.

Mechem on Public Officers, p. 394, pars. 603, 604 and 605, says:

"PAR. 603. Governmental duties are owing to the public.—Again, the duties which are imposed upon these great departments are such as are owing to the public at large and not to individuals, and this rule is as true of the executive department in the exercise of the constitutional powers confided to it as such, as it is of either of the others. For the performance of such duties, as has been seen, the officer must respond only to the public and not to individuals.

"PAR. 604. Governmental powers are confided to the discretion of the officer.—So, also, the powers which by the constitution are conferred upon the executive department are usually of such a nature as are confided to its discretion. They are often called political powers, and for their due administration the judgment and discretion of the officer to whom they are confided must be appealed to. In the exercise of such powers, it is well settled that the officer will not be controlled by the courts, but he is, as was said by Chief Justice Marshall, 'accountable only to his country in his political character, and to his conscience.'

"PAR. 605. Governmental officers not liable to private action.—Following out the doctrine of the preceding sections, therefore, it may be laid down as a general rule that no public officer or agency charged with the exercise of governmental authority of this description, can be called upon to answer, in a private action, for the manner in which that authority has been exercised."

In paragraph 607, the same author says:

"President of the United States.—No case has yet arisen in which it has been attempted to hold the President of the United States amenable to a private action for his official conduct; and, certainly, so far as the performance of the great political powers which are conferred upon him is concerned, no such action could be maintained. Speaking of this subject, Chief Justice Marshall said: 'It is scarcely necessary for the court to disclaim all pretensions to such a jurisdiction. An extravagance, so absurd and excessive, could not have been entertained for a moment. The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.'

"PAR. 608. Cabinet officers and heads of departments.—The same immunity has been extended to cabinet officers and the heads of departments in the performance of those duties which are confided to their official judgment and discretion. * * *

"PAR. 609. Governors of States.—The same immunity extends also to the governors of States. 'The governor of the State/ says Judge Cooley, 'is vested with a power to grant pardons and reprieves, to command the militia, to refuse his assent to laws, and to take the steps necessary for the proper enforcement of the laws; but neglect of none of these can make him responsible in damages to the party suffering therefrom. * * * The executive, in these particulars, exercises his discretion, and he is not responsible to the courts for the manner in which his duties are performed. Moreover, he could not be made responsible to private parties without subordinating the executive department to the judicial department, and this would be inconsistent with the theory of republican institutions. Each department, within its province, is and must be independent.' "

For the same reason, the rule of nonliability applies to judicial officers.

Page 400, par. 619, the same author says:

"Judicial officer not liable to private action for judicial act within his jurisdiction.—It is a general principle, abundantly sustained by authority and reason, that no civil action can be sustained against a judicial officer for the recovery of damages by one claiming to have been injured by the officer's judicial action within his jurisdiction. From the very nature of the case, the officer is called upon by law to exercise his judgment in the matter, and the law holds his duty to the individual to be performed when he has exercised it, however erroneous or disastrous in its consequences it may appear either to the party or to others."

There is a legal presumption that any law enacted by the Legislature is valid, and the Governor-General had a legal right to assume that Act No. 2868 was valid. It was neither his official province nor duty to say whether the Act was or was not constitutional.

By the organic law, it is the duty of the legislature to make the law; of the executive to enforce; and of the courts to construe the law. The courts only have the power to declare a law unconstitutional. In the very nature of things, it is not the duty of the Governor to say whether a law is or is not constitutional. It is his duty to enforce the law until such time as it has legally been declared unconstitutional. To hold an executive personally liable in an action for damages for the performance or nonperformance of official duty, in legal effect, would make him a judge as to when a law is or is not constitutional.

If it is the duty of the executive to both construe and enforce the law, and he is personally liable in damages for a wrongful construction of the law, very few laws would be enforced, and no reputable and responsible man would accept the office of Governor.

In their learned and exhaustive brief, counsel for appellant have not cited any authority, and none will ever be found, holding a governor personally liable in an action for damages, for the enforcement of any law before it has legally been declared unconstitutional.

In the instant case, Act No. 2868 was enacted by the Legislature. By its terms and provisions, certain duties were thrust upon the Governor-General. He had a legal right to assume that the law was valid, and in the exercise of his discretion, he undertook to enforce the law and to carry out its terms and provisions, and it is that of which the plaintiff complains.

Although we do not agree with some of the statements and conclusions of the trial court, under the existing facts, an injunction as to defendants here is a moot question, and would be a vain and useless order of the court. Hence, the plaintiff is not entitled to that relief. Whatever may be the rule as to such alleged acts committed after a law has been declared void, assuming that all the facts which plaintiff alleges are true, at the time of their commission, the defendants had a right to assume that the law was valid and are not personally liable to the plaintiff in an action for damages. For such reason, the judgment of the lower court is affirmed, without costs to either party in this court.

Assuming that the market value of rice was P26.32 per cavan, and that the defendants were only ready and willing to pay P16.25 per cavan, it may be claimed that the taking of the rice was a confiscation of his property to the amount of the difference between the actual value and the proposed value. But, conceding that to be true, the defendants are not personally liable in an action for damages. Their acts were official and discretionary, and they had a legal right to assume that the law was valid. In the commission of the alleged acts, they were acting for, and representing, the Government of the Philippine Islands under a law enacted by its Legislature, and it is elementary that without its consent no suit or action lies against the Government itself. So ordered.

Araullo, C. J., Johnson, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

CONCURRING

STREET, J.,

The complaint in this case suffers in my opinion from the defect of an improper joinder of distinct causes of action, and for this reason the judgment of the trial court may properly be affirmed. The misjoinder of different causes is discernible in the circumstance that the complaint purports to be brought specifically on behalf of the

following persons and firms, to wit, "L. S. Moon & Co., Kwong Nam Sang, Wong Yon, Kwong Tan Chong and generally on behalf of all rice importers, there being many such in business in the cities of Manila, Iloilo and Cebu, and also on behalf of all retail dealers of imported or locally grown rice, of whom there are thousands doing business throughout the Philippine Islands." (Par. VIII of complaint.) In the second paragraph of the prayer for relief it is asked that the defendant officials be ordered to return to their respective owners the stocks of rice seized by them, and in other parts of the same prayer injunctive relief is sought against the enforcement of Act No. 2868.

It is evident that the various acts of seizure here complained of constituted wrongs against the respective owners of the particular rice taken in each case; and there was no propriety in attempting to enforce their different causes of action in a single proceeding. Moreover, I am unable to see the propriety of joining a cause of action founded on the particular grievance of one personality in the same action in which it is sought to enforce rights pertaining to many.

If the prayer of the complaint had been limited to a petition to recover possession of the rice alleged to have been taken from L. S. Moon & Co., it would in my opinion have stated a good cause of action; and the right of the plaintiff to recover such rice would not be in any degree prejudiced by reason of the official character of the persons by whom the unlawful seizure was made.

The statement in the opinion to the effect that this action is not now maintainable, for the reason that the officials named as defendants have been succeeded in office by other persons is a proposition to which I am unable to subscribe as I am under the impression that an action against a public officer is not abated by a change in the incumbency of the office pending the action, where the action is in its nature against the office (1 C. J., 146) ; and the practice of this court has, I think, been in conformity with this idea.

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