

LUNG CHEA KUNG KEE & CO., PLAINTIFF, VS. BEN F. WRIGHT, INSULAR AUDITOR OF THE PHILIPPINE ISLANDS, DEFENDANT.

G.R. No. 22512. August 02, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an action for a writ of mandamus to compel the Insular Auditor to countersign a warrant drawn by the Collector of Customs against the "General Fund" of the Bureau of Customs and is now before us upon a demurrer to the petition on the ground that it does not state facts sufficient to constitute a cause of action.

The petition reads as follows:

"Plaintiff alleges:

"(1) That the plaintiff is a regularly constituted copartnership, having its principal place of business at Shanghai, China;

"(2) That defendant is, and at all times herein mentioned was, the duly appointed, qualified, and acting Insular Auditor for the Philippine Islands;

"(3) That on the 7th day of March, 1924, this Honorable Court rendered its final decision and judgment in a certain civil action Number G. R. 21362, entitled 'Lung Chea Kung Kee & Co., plaintiff, vs. Vicente Aldanese, Collector of Customs, and Chua Soco, defendants,' a copy of which said decision and judgment is hereto attached, marked Exhibit A, and made a part hereof;

"(4) That the aforesaid civil action in which the aforesaid decision and judgment was rendered by this Honorable Court came to this Honorable Court on appeal from the Court of First Instance of the City of Manila, in which said last mentioned court the action was numbered 22840 and entitled 'Lung Chea Kung Kee, plaintiff, vs. Vicente Aldanese, Collector of Customs, and Chua Soco, defendants ;'

"(5) That on the 27th day of March, 1924, the Court of First Instance of the City of Manila, pursuant to the aforesaid decision and judgment of this Honorable Court, entered judgment, in the said civil case No. 22840, in favor of this plaintiff and against Vicente Aldanese as Collector of Customs of the Philippine Islands, one of the defendants in the said action, a copy of which last mentioned judgment is hereto attached, marked Exhibit B, and made a part hereof;

"(6) That on the 5th day of April, 1924, the said Vicente Aldanese, as Insular Collector of Customs of the Philippine Islands, drew and signed a certain warrant upon the Insular Treasury of the Philippine Islands for the payment of the amount of the aforesaid judgment, a copy of which said warrant is hereto attached, marked Exhibit C, and made a part hereof;

"(7) That the aforesaid warrant upon the Insular Treasury of the Philippine Islands, having been duly drawn and signed as aforesaid, was presented to the defendant herein in his capacity as Insular Auditor of the Philippine

Islands, for counter-signature as required by law; but that the said defendant, in violation of his duty as such Insular Auditor of the Philippine Islands, refused, and still refuses, to countersign the said warrant, thereby excluding the plaintiff from the use and enjoyment of a right to which he is entitled;

"(8) That plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law other than the issuance of a mandate to the defendant commanding him forthwith to countersign the said warrant."

The petition concludes with a prayer for a peremptory order against the respondent commanding him, immediately after the receipt of such order, to countersign the aforesaid warrant and to deliver the same to the petitioner, and for such other and further relief as to the court may seem just and equitable.

Exhibit A referred to in the petition is a decision of this court ordering the Court of First Instance to enter a judgment in favor of the herein petitioner and against "Vicente Aldanese as Collector of Customs" for the sum of P47,816.32 as damages for the misdelivery of merchandise entered at the port of Manila and consigned to the petitioner.

Exhibit B is a copy of the judgment as entered.

Exhibit C is a treasury warrant in the usual form drawn by the Collector of Customs against the appropriation for the Bureau of Customs' "General Fund" for the sum of P47,816.32.

The case presents no difficulties and may be disposed of in very few words: The warrant which the respondent refuses to countersign is issued for the purpose of satisfying a judgment against the Collector of Customs for damages for a tort committed by one of his subordinates and for which he himself has been held liable. There is no judgment against the Government. In common with other governments, the Government of the Philippine Islands is not liable for damages for the negligent acts of its regular officials and employees in the performance of their ordinary functions. (*Merritt vs. Government of the Philippine Islands*, 34 Phil., 311.) The fund against which the warrant in this case is drawn is not the property of the Collector of Customs; it is a public fund and in the absence of specific statutory provision to the contrary, can only be used for the satisfaction of obligations of the Government. The warrant showing a contemplated expenditure for another and different purpose, it was not only the right but the duty of the Insular Auditor to refuse to countersign it.

We are, of course, aware of the ruinous hardship the judgment mentioned may cause the Collector of Customs, but his relief must be sought in a different manner. It is customary for the legislative power to make special appropriations for the relief of officials who, through no fault of their own, have become liable in damages to private parties through the negligence or mistake of subordinate employees.

The demurrer is sustained and it being evident that the petition suffers from defects not curable by amendment, an order absolute will be entered dismissing the same, without costs. So ordered.

Johnson, Street, Malcolm, Villamor, and Romualdez, JJ., concur.

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