

THE PROVINCIAL GOVERNMENT OF SULU, PLAINTIFF AND APPELLANT, VS. P. D. ROGERS, DEFENDANT AND APPELLEE.

G.R. No. 23019. August 11, 1925

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the Province of Sulu by the provincial government of that province, for the purpose of recovering of the defendant, P. D. Rogers, the sum of P102,920.06, with interest from November 7, 1921, and with costs. The defendant answered with a general denial and by way of special defense asserted, first, that the institution of the action had not been ordered by the Governor-General of the Philippine Islands in accordance with section 650 of the Administrative Code; and, secondly, that under a special provision contained under No. 36 of paragraph (h) of Act No. 2997 of the Philippine Legislature (17 Public Laws, p. 23) the Insular Auditor is alone competent to maintain this action.

Upon hearing the cause the trial judge, without considering the cause on its merits, dismissed the complaint on the ground that it did not appear that the Governor-General had authorized the institution of the action.

The cause of action stated in the complaint is based upon alleged shortages of the defendant in his accounts as provincial treasurer of Sulu and as exchange officer of the Sulu Trading System, and in connection with the complaint certain statements of account made by the district auditor of the Province of Sulu are exhibited which show prima facie that the shortages referred to in fact exist.

Section 650 of the Administrative Code, in its first paragraph, reads as follows:

"The Insular Auditor shall, through the proper channels, supervise and procure the collection and enforcement of all debts and claims, and the restitution of all funds and property, found to be due the Government in his settlement and adjustment of accounts; and if any legal proceeding is necessary to such end, he shall request the Governor-General to authorize and direct the institution of the same."

His Honor, the trial judge, seems to have been of the opinion that the provision quoted creates a condition precedent to the maintenance of the present action. In this, we think, his Honor was in error. The provision requiring the Insular Auditor to request the Governor-General to authorize and direct the institution of any action necessary to the collection of debts due to the Government is evidently of a distinctly administrative nature, and the propriety of the provision arises from the fact that legal proceedings require the intervention of the Attorney-General, who is of coordinate authority with the Insular Auditor. The Insular Auditor has no direct control over the Attorney-General, and any request by the Auditor for action on the part of the Attorney-General looking towards the enforcement of money demands must be made through the Office of the Governor-General, who is the department head of the Insular Auditor. It is by law made the duty of the Attorney-General to supervise the action of the provincial fiscals and where an action is to be brought in the name of a provincial government, as in this case, the machinery is properly set in motion through the Department of Justice and Attorney-General.

We note that on November 7, 1921, the Acting Insular Auditor advised the Governor-General that the defendant

herein was short in his accounts as provincial treasurer of Sulu and as exchange officer of the Sulu Trading System to the extent of P16,766.87, and requested that the Attorney-General be authorized and directed to institute the necessary legal proceedings for the collection of said amount, with interest. The requested authority was given (Exhibit D-1). Later the shortage of the defendant in the capacities stated appears to have been found to be much greater than had been supposed, and the larger amount was claimed in the complaint, without it appearing that any further authorization from the Governor-General was obtained.

The point we consider to be immaterial, and the action in our opinion can be maintained without further proof of authorization by the Governor-General. If any person should at any time consider himself to be improperly harassed by the institution of an unauthorized action, the Governor-General would undoubtedly have authority, if the action were unauthorized, to direct the proceedings to be dismissed, and this, we think, is the proper administrative remedy under section 650 of the Administrative Code. It is exceedingly embarrassing to the administration of justice to multiply the obstacles to the maintenance of actions of any sort, and we hold that there was no intention on the part of the Legislature to make proof of authorization by the Governor-General a condition precedent to the maintenance of an action instituted by or under the authority of the Bureau of Justice.

There is nothing in the last paragraph of No. 36, paragraph (h) of Act No. 2997 which in any way changes these considerations. It is there declared that the Insular Auditor shall liquidate the commercial enterprises and related financial affairs of the Provincial Government of Sulu and, among other things, he is required "to enforce collection of amounts due that provincial government." Of course the authority to enforce collection of these claims must be understood to impose upon the Insular Auditor the duty to proceed according to law along the ordinary channels of action, that is, through the Bureau of Justice.

The action of the trial judge in dismissing the complaint is reversed, and the cause will be remanded to the court of origin in order that the case may be determined upon its merits. No special pronouncement will be made as to costs. So ordered.

Avanceña, C. J., Johnson, Malcolm, Ostrand, and Johns, JJ., concur.

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