

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. CIRILO SANDAL, DEFENDANT AND APPELLEE.

G.R. No. 26757. October 11, 1927

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought by the Attorney-General, in behalf of the Government, for the purpose of reversing an order of the Court of First Instance of the Province of Pampanga sustaining a general demurrer to the information.

The fiscal intended in the information to charge an offense under section 45 of the Act of Congress of March 4, 1909, which reads as follows:

"Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both."

The information in question runs thus:

"The undersigned provincial fiscal charges Cirilo Sandal with a violation of section 45 of the Federal Criminal Code of the United States, in relation with article 499 of the Revised Administrative Code, as follows:

"On or about July 26, 1925, in Camp Stotsenburg of this Province of Pampanga, Philippine Islands, and within the jurisdiction of this Court of First Instance, the above named accused, Cirilo Sandal, voluntarily, illegally, and criminally entered and penetrated within the Military Reserve of Camp Stotsenburg, without the permission or authorization of the authorities of said Camp, and notwithstanding the express prohibition made to the accused by said authorities that he should not enter or penetrate within said Military Reserve.

"Act committed in violation of law."

In sustaining the demurrer and dismissing the prosecution the court below proceeded upon the idea that section 45 of the Federal Criminal Code of the United States is not in force in the Philippine Islands: This is a mistake. It is true that in section 1 of the Philippine Bill and section 5 of the Philippine Autonomy Act it is expressly declared that section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands. This section provides generally for the extension of the constitution and laws of the United States to all its territories. It results that, as a general thing, Congressional legislation is not in force in these Islands unless expressly so declared by Congress. But this rule has more particular reference to territorial extension and is no obstacle to the enforcement in the Philippine Islands of Congressional laws which are inherently of general application to particular subjects. In *Tan Te vs. Bell* (27 Phil., 354), it was held that section 3748 of the Revised Statutes is in force in these Islands notwithstanding the fact that section 1891 of the Revised Statutes is not applicable here. Section 3748 confers upon United States Army officers the power to seize military equipment found in possession of other persons than

soldiers when title has not been legally acquired through the Government of the United States. If this section must be considered to be in force in the Philippines as an incident of the presence of the Army establishment, no reason is discernible why section 45 of the Federal Criminal Code of the United States should not also be considered in force here. The purpose of the Statute is to confer a certain police power upon the authorities in charge of military reservations, and this provision necessarily accompanies the military authorities wherever a military reservation may be lawfully established. The provision deals with a specific subject matter which is in no wise conditioned by the place of location of the reservation. In the last paragraph of section 75 of "Constitutional Law of the Philippine Islands," written by Justice George A. Malcolm, of this court, it is said: "We therefore know that the laws of war, and at least one section of the Revised Statutes enacted for the protection of the Army, have followed this agency of national sovereignty to the Philippines, and have consequently inherent force and effect in these Islands without express extension by Congress. What other laws of Congress are in the same class is uncertain." It is very evident, we think, that the provision now before us is of the character contemplated in the observation quoted. The trial court was therefore in error in supposing that the information was denurrable for lack of a law denouncing the offense.

But the demurrer to the information is in general terms; and a comparison of the provisions of section 45 of the Federal Criminal Code with the facts alleged in the information reveals, we think, a better reason for sustaining the demurrer than that given in the appealed decision. In this connection it will be noted that, under the statute, the first entrance which a person makes into a reservation—if not prohibited by law or military regulation—is lawful. It is the reentrance of a person upon the reservation, or being found therein, after he has once been removed or ordered not to reenter, which constitutes the offense. A first entrance is not an offense unless made for an unlawful purpose. In the case before us it is not alleged that the accused entered the reservation for any purpose prohibited by law or military regulation, nor is it alleged that he was found therein after having been removed therefrom or ordered not to reenter. The information merely charges that the accused entered the reservation without permission and notwithstanding the express prohibition made by the authorities to the accused that he should not enter. It is obvious, therefore, that the information fails to charge an offense.

Among the papers brought up with the record is a written notification, dated July 23, 1925, directed to the accused by authority of the Brigadier-General in charge, informing the accused that he must leave the Camp and not again enter the same. This is precisely the kind of notification necessary to lay a basis for this penal prosecution of the accused upon reentering the reservation; but the fiscal who drafted the information failed to follow the language of the statute, and instead of charging a reentrance into the reservation after receipt of the notice, merely charges that the accused entered the reservation. That the statute is commonly understood in the sense of prohibiting a reentrance after removal or order not to reenter—not a mere first entering upon the reservation—is shown by the annotation to section 45 contained in Federal Statutes Annotated, where it is said that it is the return of a person who has been ejected which constitutes the offense (7 Fed. Stat. An., 2d ed., p. 610).

From what has been said it is apparent that though the information does not suffer from the defect imputed to it by the trial judge, the demurrer was nevertheless well founded for the reason that the information merely charges an entrance on the part of the accused into the reservation after he had been ordered to stay out, when it should have charged that he had reentered or was found on the reservation after receiving such an order. Moreover, the real defect from which the information suffers is in its nature amendable, and the court should have ordered that a new information should be filed, in accordance with section 23 of the Code of Criminal Procedure.

It results that the appealed order is affirmed in so far as it declares the information to be insufficient but reversed in so far as it orders the dismissal of the case and the cancellation of the bond of the accused; and the cause is remanded with directions to the fiscal to file a new information in conformity with the views expressed in this

opinion, the accused meanwhile to be held for trial upon such information. So ordered, without costs.

Avanceña, C. J., Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

JOHNSON and VILLAMOR, JJ., dissenting:

The decision in this case is somewhat anomalous. The argument, from the beginning to the end, is that the decision of the court a quo is wrong, but nevertheless "the appealed order is affirmed." The decision holds that the arguments of the lower court are "all wrong," but that his conclusions are "all right." When this case is returned to the lower court the judge thereof will have occasion to be somewhat surprised to find that he has been both "affirmed" and "reversed" and upon a theory entirely different from that presented to him. That the facts alleged in the complaint presented in the lower court were insufficient in form and substance to constitute a crime, under the provisions of section 45 of the Federal Criminal Code (Act of Congress of March 4, 1909) did not occur to any of the parties during the hearing in the lower court, is evident. The defendant simply insisted that section 45 of said Act of Congress was not in force in the Philippine Islands and all of his argument was based upon that theory. All of the argument of the prosecuting attorney in the lower court was based upon the theory that said section was in force in the Philippine Islands. The whole theory upon which the demurrer was sustained by the lower court is based upon the following statement: "En el presente caso se pretende que uno de los juzgados civiles de estas Islas haga aplicacion del articulo 45 delCodigo Criminal Federal de los Estados Unidos, no obstante no haber sido este hecho extensivo a estas Islas mediante disposicion expresa del Cdngreso de dichos Estados Unidos."

From the conclusion of the lower court in which the demurrer to the complaint was sustained upon the above theory, the prosecuting attorney of the Province of Pampanga appealed and now contends, in an exceedingly well prepared brief, (a) that the lower court erred in holding that section 45 of the Federal Criminal Code (Act of Congress of March 4, 1909) is not applicable to the Philippine Islands and (b) that the lower court erred in sustaining defendant's demurrer and in dismissing the information.

It will thus be seen that the only question presented to this court for decision is, whether or not said section (sec. 45, Act of Congress of March 4, 1909) is in force or is applicable to the Philippine Islands. That question is presented here by virtue of the appeal of the prosecuting attorney. The facts of record are brief and may be stated as follows:

That on or about the 14th day of May, 1926, a complaint was presented against the defendant Cirilo Sandal in the court of the justice of the peace of the municipality of Camp Stotsenburg, Province of Pampanga, accusing him of a violation of section 45 of the Federal Criminal Code, in connection with section 499 of the Administrative Code, in that said Cirilo Sandal "did, on the 26th day of July, 1925, at the municipality of Camp Stotsenburg, Province of Pampanga, voluntarily, illegally and criminally, after having been duly notified not to again enter the military reservation at Camp Stotsenburg, Pampanga, wantonly trespass the same (Camp Stotsenburg), contrary to the statute in such cases made and provided.""

Accompanying said complaint we find the following notice:

"HEADQUARTERS CAMP STOTSENBURG, PAMPANGA, P. I.

"OFFICE OF THE PROVOST MARSHAL

"July 23, 1925

"CIRILO SANDAL

"Sapang Bato, P. I.

"Sir: You are hereby notified that you must leave the Camp Stotsenburg Military Reservation at once and you are hereby ordered not to again enter the same.

"Your attention is called to section 45, Criminal Code, Act of March 4, 1909, to wit: 'Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months or both.'

"By command of Brigadier-General Symmonds:

"J. D. COOK

"Capt. (PS) Cav., 26th Cav. (PS)

"Provost Marshal

"CAMP STOTSENBURG, P. I.

"July 23, 1925

"I acknowledge to have received a copy of the above letter.

(Sgd.) "CIRILO SANDAL

"Witness:

(Sgd.) "FEED SLADKY

"JUAN MATIGNAS"

Upon said complaint Cirilo Sandal was arrested and arraigned before V. Santos, justice of the peace of the municipality of Camp Stotsenburg. Upon arraignment he pleaded not guilty. On the 19th day of May, 1925, the cause was set down for hearing. The defendant waived the preliminary examination and asked that the cause be referred to the Court of First Instance.

On the 22d day of May, 1926, the prosecuting attorney of the Province of Pampanga filed a complaint against the defendant in the words and figures following:

"El Fiscal Provincial que suscribe acusa a Cirilo Sandal de la infraccion del articulo 45 delCodigo Criminal Federal de Estados Unidos, en relation con el articulo 499 delCodigo Administrativo Revisado, cometido como sigue:

"En o hacia el dia 26 de julio de 1925 en el Campamento Stotsenburg, de esta Provincia de Pampanga, Mas Filipinas, y dentro de la jurisdiccion de este Juzgado de Primera Instancia, el acusado arriba nombrado, Cirilo Sandal, voluntaria, ilegal y criminalmente entro y penetro dentro de la Reserva Militar del Campamento Stotsenburg, sin permiso ni automacion de las autoridades de dicho Campamento, y no obstante la prohibicion expresa hecha al acusado por las referidas autoridades para que no entrara ni penetrara dentro de dicha Reserva Militar. Hecho cometido con infraccion de la ley."

After several transfers of the trial of the cause for one reason or another, the defendant on the 4th day of October, 1926, presented a demurrer to the complaint in the language following:

"Por medio del infrascrito abogado de oficio, comparece el acusado e interpone demurrer contra la querella bajo el fundamento de que los hechos denunciados no son constitutivos de delito ni falta porque (a) el acto imputado al acusado no esta penado por ninguna ley de Filipinas y (b) elCodigo Criminal Federal de los

Estados Unidos no es aplicable a estas islas."

After hearing the respective parties upon said demurrer the Honorable Hermogenes Reyes, judge, reached the conclusion that said Act of Congress was not in force in the Philippine Islands and dismissed the complaint, with costs de oficio. From that judgment sustaining the demurrer the fiscal appealed to this court and presented the assignments of error noted above.

It will be noted from an examination of the demurrer and the argument in support thereof that but one question is presented, to wit: That there is no law in force (either in the Penal laws of the Philippine Islands or Act of Congress) in the Philippine Islands which makes the acts of the defendant, described in the complaint, a crime. The defendant makes no statement nor argument, in support of his demurrer, that the facts of the complaint are not sufficient, if a law is in force in the Philippine Islands punishing such acts. There is not even an intimation on the part of the defendant that the facts set forth in the complaint are not sufficient to constitute a cause of action if the said Act of Congress is in force here.

The complaint set forth above contains two important allegations: (a) That the defendant did on the 26th day of July, 1925, enter the military reservation of Camp Stotsenburg without permission or authority of the authorities of said Camp; and (b) that he did so enter the said military reservation, notwithstanding the express prohibition given to him by the authorities of said Camp not to enter within said military reservation. Reading said two allegations of the complaint, it becomes clear that the defendant did reenter within said military reservation "after having been ordered not to reenter by an officer in command of said military reservation."

The theory of the majority opinion is, that under said section 45, persons can only be punished thereunder, who shall reenter after having been once removed therefrom. That is not the law. A careful reading of said section 45 will show that any person who shall "be found within any such reservation, etc., after having been removed or ordered not to return" by an officer shall be punished. In the present case the complaint clearly charges that the defendant entered the said military reservation after he had been expressly "ordered not to enter" by the officer in command.

From the foregoing it is clear, even though the question was not presented to the lower court, that the facts stated in the complaint are sufficient to constitute a crime under the provisions of section 45 of said Act of Congress, and the demurrer should have been overruled even upon that ground and the defendant should have been required to answer.

Coming now to a discussion of the real and only question presented and discussed by the respective parties in the lower court, to wit, whether or not said section 45 is in force in the Philippine Islands, it may be said that, that question is one of vital importance as it may affect the administration of all the United States military and naval reservations, army and navy posts, forts and arsenals in the Philippine Islands. The United States Government has full and ample power and authority to protect its military and naval organizations in the reservations, army and navy posts, forts and arsenals against unlawful intruders wherever such reservations, army and navy posts, forts and arsenals may exist, within or without the United States, under the American flag. The laws and regulations governing and controlling the military and naval reservations of the United States Government follow such organizations wherever they may be lawfully located, whether within or without the continent of the United States of America. No special law is necessary to extend such regulations when said organizations happen to be outside of the real boundaries of the United States Government. The sovereignty of the United States Government is over the Philippine Islands. Its army and navy organizations have established reservations within the Philippine Islands by virtue of the authority of the United States Government. The general regulations governing military and naval reservations in the United States apply to such reservations in the Philippine Islands without the necessity of a

special law making such regulations applicable.

The United States Philippine Commission, recognizing the necessity of protecting United States military and naval reservations, adopted Act No. 530, which, under section 2, provides that "the military authorities shall have the right to eject any intruder or trespasser on any public lands reserved by the President for military purposes in the Philippine Islands, and to suppress open breaches of the peace and abate nuisances thereon." (Sec. 499, Administrative Code.) That Act (530), however, failed to provide a punishment for its violation. It left the punishment of any intruder or trespasser on military reservations to the provisions of the penal laws in force in the Philippine Islands.

The Congress of the United States, evidently recognizing the necessity of a more specific law for the protection of military reservations, etc. on the 4th day of March, 1909, adopted a law for that purpose. (7 Fed. Statutes Annotated, p. 610, 2d ed.) Section 45 of that Act provides: "Whoever shall go upon any military reservation, army post fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than \$500, or imprisoned not more than six months, or both."

The defendant contends that section 45 is not applicable to the Philippine Islands, presumably for the reason that said Act of Congress does not expressly make the same applicable to the Philippine Islands. In the first place it will be noted from the reading of said section, that it is made to apply to "any" military reservation, etc. The military reservations of the Philippine Islands are just as completely under the control of the Government of the United States as if they were entirely within the borders of the United States, and Congress, in adopting said section 45 evidently had that fact in mind when they provided that said section shall be applicable to "any" military reservation.

Fortunately this is not the first case which has come before the courts, not only in the United States but also in the Philippine Islands, where the question of the right of the state or local authorities of the state to interfere or to exercise control over military reservations or other reservations of the Federal Government, was raised. As early as June 30, 1897, in the case of *In re Thomas* (82 Federal Rep., 304), the question of the right of the Federal Government to control its reservations was presented to the courts. The question was presented to Mr. William Howard Taft, then one of the circuit judges of the sixth judicial circuit. After a statement of the facts and in the course of the decision, Judge Taft said:

"When the Government of the United States purchases land in a state for the purpose of discharging such a duty, it is not within the power of the state legislature to interfere with or regulate the mode in which it shall be performed. What it does for this purpose is exactly as much within its complete control as when its quartermaster furnishes food to its soldiers, or when its pension agents distribute money to its pensioners. It is entirely immaterial in what place, within the jurisdiction of the Government of the United States, the duty is discharged. State lines cannot affect or modify the complete control which the Federal Government and its agents and officers duly authorized have over the manner of discharging it. The jurisdiction of the state government in such a case is excluded not because of the place where the act is done, but because that which is being done is the business of the United States, and such business is as completely beyond the influence and control of the state government as if it were not done within the territory of the state."

The question whether or not certain statutory provisions of Congress were applicable to the army and navy operating within the Philippine Islands, notwithstanding the provisions of section 1 of the Act of Congress of July 1, 1902, was presented to this court in 1914 in the case of *Tan Te vs. Bell* (27 Phil., 354). In that case this court held that section 3748 of the Federal Statutes applied to the army in the Philippine Islands notwithstanding the

provisions of section 1 of the Act of Congress of July 1, 1902. In the course of that opinion the court said:

"This statute (section 3748) was enacted during the Civil War to meet a great pressing emergency, and the fact that it remains today unrepealed indicates that the necessity for its existence in time of peace, as well as in time of war, is thoroughly recognized. It is, in our opinion, going too far to hold that a law so essential to the discipline, well-being, and protection of the army is of no effect in this great outlying territory of the United States. To so hold would imperil the very existence of the army. The army, especially, is an agent of the United States Government whose field of duty is nation-wide. The need for its services may arise in any section of the country. It is inconceivable that Congress in enacting laws for its proper regulation and maintenance, and in conferring powers upon its officers not specifically limited to some certain territory, intended to curtail its effectiveness or weaken its authority by subsequent legislation conferring a government upon a territory having the status of the Philippine Islands."

"Congress has power to declare war, and to create and equip armies and navies. It has the great power of taxation to be exercised for the common defense and general welfare. Having such powers, it has such other and implied ones as are necessary and appropriate for the purpose of carrying the powers expressly given into effect." (U. S. vs. Gettysburg Electric Railway Co., 160 U. S., 668.)

In the case of *Ex parte Siebold* (100 U. S., 371, 394) the Supreme Court of the United States, speaking through Mr. Justice Bradley, in discussing the powers of the United States, said:

"It is argued that the preservation of peace and good order in society is not within the powers confided to the Government of the United States, but belongs exclusively to the states. Here, again, we are met with the theory that the Government of the United States does not rest upon the soil and territory of the country. We think that this theory is founded on an entire misconception of the nature and powers of that Government. We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent. This power to enforce its laws and to execute its functions in all places does not derogate from the power of the state to execute its laws at the same time, and in the same place. The one does not exclude the other, except where both cannot be executed at the same time. In that case the words of the constitution itself show which is to yield: 'This constitution, and all laws which shall be made in pursuance thereof, * * * shall be the supreme law of the land.' "

Said section 45 of the Act of Congress was certainly intended to apply to military and navy reservations, etc. wherever such reservations existed under the authority of the United States, or otherwise Congress would not have used the phrase "any military reservation." It certainly cannot be contended that the United States Government can create military reservations, army post, forts, etc. without being able to protect itself in the possession of the same. To hold that a law so essential to the discipline, well-being, and the protection of the army and navy, is of no effect in this great outlying territory of the United States, would be to subject said organizations to all sorts of annoyance and hazard. To so hold would imperil the existence of the army and navy organizations in this territory. The public domain belongs to the Government of the United States, and military and navy reservations, etc. may be made for the benefit, discipline, maintenance and protection of such organizations. The army and navy are agents of the United States Government, the duties of which are nation-wide. The need for their services may arise in any part of the world in modern times.

It is inconceivable that Congress, in enacting said section 45 for the proper regulation, maintenance and protection of the army and in conferring powers upon its officers not specifically limited to some certain territory, intended to curtail its effectiveness or weaken its authority by subsequent legislation in a territory having the status of the Philippine Islands. The army and navy are liable to be called upon for duty at any moment in any part of the world. The law and the statutes governing the army and navy are not left behind when they leave the United

States for service in foreign territory. The law and the statutes providing for the protection and maintenance of the army and navy follow said organizations wherever they may go on official and military business. The statutes adopted by Congress for the protection, the discipline and well-being of the army and navy are binding upon those organizations wherever military reservations are created, whether within or without the United States, whether in the Philippines, Hawaii, Alaska, or elsewhere.

Following the doctrine heretofore announced in the case of *Tan Te vs. Bell*, supra, we are forced to the conclusion that said section 45 of the Federal Criminal Code of March 4, 1909, is applicable to the Philippine Islands. Said section prescribes a rule of action for the army and navy organizations of the United States while they are in the territory and in all places over which the United States have exclusive control. Said section, by its very terms, is of universal application. The army and navy are necessities under every system of government and no civilized state in modern times has been able to dispense with their services. The United States Government sent its army and navy to the Philippines, and it cannot be said that, that sovereign's army and navy came to the Philippines shorn of any of the powers which the laws of the sovereign confer upon them either by an Act of Congress or by an order of the executive branch of the national Government.

With reference to the second assignment of error, that the lower court committed an error in sustaining the defendant's demurrer and in dismissing the information, it may be said that as early as July 22, 1925, the military Provost Marshal of Camp Stotsenburg notified the defendant as follows: "You are hereby notified that you must leave the Camp Stotsenburg Military Reservation at once and you are hereby ordered not to again enter the same. Your attention is called to section 45, Criminal Code, Act of March 4, 1909, to wit: 'Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.'" On the same day the defendant herein acknowledged receipt of said notice.

Notwithstanding said notice the defendant did, on the 26th day of July, 1925, according to the complaint, again reenter said military reservation without permission nor authority, contrary to the notice which he had received on the 23d day of July, 1925. While it is true that said complaint might have been drawn with little more detail, yet we are persuaded that the complaint clearly states facts sufficient in law to justify, if proven, that the defendant violated the provisions of said section 45. We are forced to the conclusion, therefore, that the facts stated in the complaint are sufficient, and that the demurrer should have been overruled.

Therefore, the judgment of the lower court, sustaining the demurrer, should be revoked, and it should be ordered and decreed that the record be returned to the court whence it came and that the judge thereof should proceed, without delay, with the trial of said cause.

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