

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CARLOS S. TAN, DEFENDANT AND APPELLANT.

G.R. No. 27637. November 17, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present appeal was taken by Carlos S. Tan from a judgment of the Court of First Instance of Leyte convicting him, as charged in the information, of a violation of section 2 of the Act of the United States Congress of July 16, 1918, and sentencing him to a fine of P10, with subsidiary imprisonment in case of insolvency, and to pay the costs of this action.

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in its decision, to wit: (1) The lower court erred in holding that the Act of Congress of July 16, 1918 is applicable to the Philippine Islands; (2) the lower court erred in convicting the defendant and sentencing him to pay a fine of P10.

Appellant's first assignment of error questions the applicability of the Act of Congress of July 16, 1918 to the Philippine Islands in view of the provisions of section 5 of the Act of Congress of August 29, 1916, known as the Jones Law.

The entire text of the Act of Congress of July 16, 1918, reads as follows:

"AN ACT TO PENSION WIDOWS AND MINOR CHILDREN OF OFFICERS AND ENLISTED MEN WHO SERVED IN THE WAR WITH SPAIN, PHILIPPINE INSURRECTION, OR IN CHINA.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That from and after the passage of this Act if any volunteer officer or enlisted man who served ninety days or more in the Army, Navy, or Marine Corps of the United States, during the War with Spain or the Philippine insurrection, between April twenty-first, eighteen hundred and ninety-eight, and July fourth, nineteen hundred and two, inclusive, service to be computed from date of enlistment to date of discharge, or any officer or enlisted man of the Regular Establishment who rendered ninety days or more actual military or naval service in the United States Army, Navy, or Marine Corps in the War with Spain or the Philippine insurrection between April twenty-first, eighteen hundred and ninety-eight, and July fourth, nineteen hundred and two, inclusive, or as a participant in the Chinese Boxer rebellion campaign between June sixteenth, nineteen hundred, and October first, nineteen hundred, and who has been honorably discharged therefrom, has died or shall hereafter die leaving a widow without means of support other than her daily labor, and an actual net income not exceeding \$250 per year, or leaving a minor child or children under the age of sixteen years, such widow shall upon due proof of her husband's death, without proving his death to be the result of his Army and Navy service, be placed on the pension roll from the date of the filing of her application therefor under this Act, at the rate of \$12 per month during her widowhood, and shall also be paid \$2 per month for each child of such officer or enlisted man under sixteen years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid

such child or children until the age of sixteen: Provided, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and shall commence from the date of application therefor after the passage of this Act: Provided further, That said widow shall have married said officer or enlisted man previous to the passage of this Act: Provided however, That this Act shall not be so construed as to reduce any pension under any Act, public or private.

"SEC. 2. That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this Act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than \$10, which sum shall be payable only on the order of the Commissioner of Pensions; and any person who shall violate any of the provisions of this section, or shall wrongfully withhold from the pensioner or claimant the whole or any part of a pension or claim allowed or due such pensioner or claimant under this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every offense, be fined not exceeding P500 or be imprisoned not exceeding one year, or both, in the discretion of the court.

"Approved, July 16, 1918"

The pension granted by the above quoted enactment is in consideration of services rendered by officers and soldiers of the United States Army and Navy in the war with Spain, in the Philippine insurrection, or in China. Such services are therefore military in character. This being so, the pension granted in consideration of military service is likewise military.

The object of the pension is the protection of the widows and minor children of such officers and soldiers as come under the conditions specified by the law. This act of humanity and justice on the part of the Federal Government cannot but redound to the benefit of the United States Army and Navy, by encouraging their officers and soldiers to continue in the service, and those who feel a vocational leaning towards the militia, to enter it, since the future of their wives and children is assured in case of death.

From this it follows that while the prime object of the Pension Act in question is the protection of the widows and minor children of the officers and soldiers of the United States Army and Navy who served actively during the war with Spain, in the Philippine insurrection, or in China, said enactment also tends to maintain and preserve said Army and Navy, and it may properly be, said that it is an Act for the maintenance of these military institutions.

In the case of *Tan Te vs. Franklin Bell* (27 Phil., 354), the following doctrine, as expressed in the syllabus, was laid down:

"LAWS RELATING TO THE ARMY.—Laws for the creation, regulation, and maintenance of the Army, not specifically limited to certain districts, are of nation-wide application and extend to all territory under the jurisdiction of the United States. Subsequent laws of Congress organizing territorial governments do not repeal such laws by implication."

This doctrine is applicable to the present case, since, as we said, the indirect object of the law in question is the maintenance of the Army and Navy.

While it is true that this Pension Act was promulgated subsequent to the Jones Law, yet its caption, title, and first section which speaks of widows and minor children of officers and soldiers who served during the war with Spain, in the Philippine insurrection, or in China, refers to Americans as well as to Filipinos and is an adequate expression of the applicability of said law to these Islands.

The trial court sentenced the accused to subsidiary imprisonment in case of insolvency. The Act of Congress in

question contains no provision authorizing the imposition of any subsidiary penalty depriving an individual of his personal liberty. Neither article 50 of the Penal Code, nor Act No. 1732 is applicable to the present case, since the former refers to pecuniary penalties imposed by the Penal Code and the latter to pecuniary penalties imposed by Acts of the Philippine Legislature. For want of an express provision of the law, subsidiary imprisonment cannot be imposed in this case.

In its decision the trial court sentenced the accused only to a fine, and did not order the return of the difference between the fee authorized by law and that charged by the accused. It is this difference that constitutes a violation of the law and the accused has no right to it, being illegal.

Wherefore, with the modification that the subsidiary imprisonment be eliminated from the judgment appealed from, and that the accused be ordered to return to Rufina Bañez the sum of \$15 which is equivalent to P30, said judgment is affirmed in all other respects with costs against the appellant. So ordered.

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

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