

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

*G.R. No. 30903. September 24, 1929*

Ponente: JOHNS, J.

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### JOHNS, J.:

The question presented involves the validity of a municipal ordinance prohibiting the sale of pork outside of the public market.

On principle the case of the United States vs. Chan Tienco (25 Phil., 89), is in point, in which it is said:

"Ordinance No. 12 was adopted for the purpose of securing pure food for the inhabitants of the municipality, thereby protecting their health and comfort."

That case cited with approval the case of United States vs. Toribio (15 Phil., 85).

The law of this case is squarely met and laid down in Corpus Juris, vol. 43, p. 397, sec. 508, as follows:

"(2) Sales outside markets.—As a general rule a municipal corporation may prohibit by ordinance or by-law the sale of marketable articles within certain limits or during certain hours except at the established market. And it is within the power of the Legislature to authorize municipal corporations to do so. While there are decisions which deny the right of a municipal corporation to prohibit selling outside of the public markets, under a general power to regulate and control markets, it is ordinarily held that such restrictive regulations as to selling outside of market limits may be made under a general power to establish and regulate markets, and that, where adequate market facilities are furnished, such regulations are not unreasonable or in restraint of trade but a proper regulation of it, although the rule is otherwise where market facilities are not furnished. In some cases such<sup>^</sup> ordinances or by-laws have been held void on the ground that they were unreasonable an<sup>#</sup> in restraint of trade. The validity of such ordinances and by-laws as being in restraint of trade obviously depends very largely upon the extent of the prohibition or regulation contained in the particular ordinance or by-law, it being well settled that such ordinances or by-laws must be reasonable. The ordinance or by-law must fall within the scope of the power granted. More particularly municipal corporations may, when duly authorized, regulate private markets, prohibit the maintenance of private markets within certain distance of a public market, prohibit the sale of perishable food outside of public markets or within certain limits about them or outside of markets during market hours, prohibit the sale of anything but fruit by keepers of fruit stands within two thousand one hundred feet of the market, or prescribe such regulations as to the time and place of selling outside of the market limits as the general welfare of the municipality may demand. It seems to be uniformly held that under a power to regulate the vending of meats, etc., a municipality may prevent their being retailed outside of the public markets."

April 29, 1915, the present Chief Justice, who was then Attorney-General, rendered an opinion construing section 39 of the Municipal Code which says that the municipal council shall:

"(q) Establish or authorize the establishment of slaughterhouses and markets, and inspect and regulate the use of the same."

In legal effect that opinion sustains the power of the municipal council to enact and to enforce the ordinance in question, and is of the same tenor and nature as the law laid down in Corpus Juris above quoted.

Upon such authorities, we are clearly of the opinion that the municipal council had the power to enact the ordinance in question; that it is not in conflict with the Jones Law, and that the court erred in sustaining the demurrer.

The judgment of the lower court is reversed and the case remanded for such further proceedings as are not inconsistent with this opinion, with costs against the defendant. So ordered.

Johnson, Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

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