

KOCK WING, PLAINTIFF AND APPELLANT, VS. PHILIPPINE RAILWAY CO., DEFENDANT AND APPELLEE.*G. R. No. 31662. February 14, 1930*

Ponente: OSTRAND, J.

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The lower portion of the Iloilo River is a tidal stream and navigable; from its mouth for a distance of about 2 miles, it has been used !as the maritime harbor of Iloilo from time immemorial. In 1912 the official harbor lines were established in accordance with the provisions of Act No. 592 of the Philippine Commission.

In the year 1904 the Philippine Commission passed an Act [1] granting one Cho Hang Lin a revocable license to construct, operate, and maintain a slipway or marine railway on the foreshore of the west bank of the Iloilo River within the present harbor lines. Section 9 of the Act provided that the license should not be "assigned, transferred, let, or sublet without the authorization and consent of the Philippine Commission." The record does not clearly show the time when the slipway or marine Railway was constructed, but there are indications that Cho Hang Lin and some of his relations established a shipyard or varadero on privately owned land, cadastral lots Nos. 604, 605, and 1030, adjoining the portion of foreshore where the slipways authorized by the commission were located.

In the year 1913, a partnership was formed for the purpose of operating a shipyard under the name "The Iloilo Dry Dock" on the foreshore above-mentioned and the three adjoining lots. Through an action brought in the Court of First Instance of Manila, the partnership was thrown into the hands of a receiver for liquidation and dissolution, and its property, as well as its business or good will, was in 1927 purchased by one Cesar Barrios, who, after the sale was approved by the court, removed the property pertaining to the shipyard, including the iron rails and wooden ways imbedded in the earth, and took it to the opposite shore of the river where he established a new shipyard. Act No. 1223. As far as the record shows, the herein plaintiff was not a regular member of the partnership, but it appears that he, shortly before the dissolution of the partnership, acquired title to the lots above-mentioned. His principal witness testified that he, the plaintiff, was instrumental in the dissolution of the partnership and that his object then was to get rid of the partnership and establish his own shipyard in Iloilo.

After the machinery and belongings of the business had been sold and the land vacated, the plaintiff took steps to establish his own shipyard, and, as a first move, obtained from the Internal Revenue Office the transfer to his name of the "Privilege Tax Receipt," which had been issued for the shipyard for the year 1927 in the name of the receiver. The transfer was made by endorsement on the receipt and reads as follows:

"Transfer of name to Kock Wing, O. K. provided new license is purchased and S. S. executed that no receipts received during April 1-18, 1927.

"S. Ramon

"Int. Rev. Agt"

On July 12, 1927, the plaintiff obtained a license from the municipal president of Iloilo.

In the meantime, on March 31, 1927, the Philippine Railway Company presented a petition to the Governor-General for permission to construct a spur extension on the foreshore land into the City of Iloilo, and the petition was granted on the 26th of May, 1927. Immediately thereafter, the company commenced work on the extension, and observing that a new shipyard was under construction on the land mentioned, the vice-president and general manager of the railroad, on August 17, 1927, called the attention of the municipal president thereto and to the fact that the company had obtained its permit from the Governor-General before the plaintiff Kock Wing had received the license for the construction of the shipyard and asked that said license be rescinded. In accordance with the request, the municipal president, on the following day, cancelled the license.

It may be noted that according to the plans and specifications appearing in the record, the railroad undertook to construct a retaining wall along the waterfront and to fill in the foreshore behind the wall. The fill was to be used for street and wharf purposes and the extension track would also be laid along the fill. The consequence would, of course, be that the shipyard would be cut off from the river.

The present action was thereupon brought, and in the complaint upon which the case went to trial, the plaintiff alleges that he is the owner of the land upon which the shipyard is constructed and that if the railway company is permitted to construct a wharf in front of the land, he, the plaintiff, will be deprived of his access to the river, and that by reason thereof, he will suffer damages in the sum of P75,000. The plaintiff therefore prayed that the railroad company be prohibited from constructing such wharf and from molesting the plaintiff in his shipyard business and from preventing him from exercising his right of access to the water.

Upon trial, the court below absolved the defendant railway company from the complaint, with the costs against the plaintiff. From this judgment the plaintiff appeals and presents five assignments of error, the substance of which is that the plaintiff has been unlawfully deprived of full access to the river and that in the year 1927 the Governor-General had no authority to grant the Philippine Railway Company a right of way on the foreshore in question.

The appellant's brief is replete with quotations from United States authorities and efforts are made to show that such quotations are applicable here. But such is not the case. As said by the United States Supreme Court in the case of *Shively vs. Bowlby*, 152 U. S. at page 26:

"The foregoing summary of the laws of the original states shows that there is no universal and uniform law upon the subject; but that each state has dealt with the lands under the tide waters within its borders according to its own views of justice and policy, reserving its own control over such lands, or granting rights therein to individuals or corporations, whether owners of the adjoining upland or not, as it considered for the best interests of the public. Great caution, therefore, is necessary in applying precedents in one state to cases arising in another."

At page 40, the court said:

"The later judgments of this court clearly establish that the title and rights of riparian or littoral proprietors in the soil below high water mark of navigable waters are governed by the local laws of the several states, subject, of course, to the rights granted to the United States by the Constitution."

In this jurisdiction, littoral rights are determined by statute and until such statutes are changed by Congressional legislation, they are controlling. (Kerr vs. Couden, 223 U. S., 268.)

The provisions pertinent to the use of the shores of tidal streams are found in the Civil Code and in the Spanish Law of Waters of 1866 which became effective in the Philippines in 1871. Articles 339 and 341 of the Code read as follows in English:

"Art. 339. Property of public ownership is—

"1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, river-banks, shores, roadsteads, and that of a similar character;

"2. That belonging exclusively to the State which, without being intended for general public use, is employed in some public service, or in the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until granted to private individuals."

"Art. 341. Property of public ownership, when no longer devoted to public uses or to the defense of the territory, shall become a part of the private property of the State."

The Law of Waters of 1866 states the following:

"Article 1. The following are part of the national domain open to public use:

* * * * *

"3. The Shores. By the shore is understood that space alternately covered and uncovered by the movement of the tide. Its interior or terrestrial limit is the line reached by the highest equinoctial tides. Where the tides are not appreciable, the shore begins on the land side at the line reached by the sea during ordinary storms or tempests.

"Art. 2. The mouths of rivers so far in as accessible to merchant vessels, whether coasters or deep sea ships, shall be regarded as maritime ports. With the above exception, the banks of rivers preserve their special character as such, even though they be washed by the waters of the sea.

* * * * *

"Art. 17. The use of the shores also belongs to the public, under the police supervision of the civil authorities; all persons may fish thereon, wash, bathe, embark and disembark on pleasure trips, spread and dry clothes and nets, bathe cattle, remove sand, and collect stones, shells, plants, shellfish, and other products of the sea, and do other things of a like nature. These rights may be restricted by virtue of the regulations necessary for the coast defense or police supervision, or in the interests of public utility or decency.

"Art. 18. In no place on the coasts, shores, ports, or entrances of rivers, nor on the islands referred to in article 3, shall new works of any kind whatever be constructed, nor any building be erected, without proper permission, in accordance with the provisions of this law and with those of the law regarding ports.

"Art. 22. Permission to build in the sea, or upon its shores, or the adjacent property, wharves, quays, dockyards, shipyards or careening-places, or towing-paths, or to establish salt-pans, factories, or any other industrial concerns, destined for private use, shall be granted by the department within whose authority the matter falls.

It will be readily seen that under the articles quoted, the private owner of upland adjoining the shore has no greater rights than any other individual in regard to the use of the shore. The foreshore land is, in a sense, held in

trust for the benefit of the public, but its use is under the control of the Government. In speaking of the public domain, Manresa says: "The State holds this property in the exercise of its sovereignty; and that it may serve the public interest, the State takes care of it, preserves and regulates it whenever it must be brought into use. Such property is, in fine, a national, a provincial, or a municipal patrimony, under the safeguard of the particular State concerned." (Manresa's Commentaries, vol. 3, page 68, fifth edition.)

The uses requiring no permits or licenses are enumerated in article 17 above quoted, and the construction of shipyards or any other industrial enterprises are not included therein. To establish such enterprises, it is necessary to obtain the consent or approval of the Government. In the present case, the plaintiff, in violation of article 17 of the Law of Waters, attempted to establish a shipyard, partly on foreshore land, without any authorized grant, license, or permit.

The license granted Cho Hang Lin was not legally assigned or transferred to the plaintiff; the change of the name in the privilege tax receipt was unauthorized and would, in any event, have been of no consequence; the license or permit issued by the municipal president was not within that official's powers; and though in the Public Utility Act (Act No. 3108), shipyards are classified as public utilities, the plaintiff has no license or certificate of public convenience. In constructing and operating the shipyards he violated the law, and it follows that he is not entitled to damages for the alleged interference with such operations. In common with the general public and subject to Government regulations, he has still the rights enumerated! in article 17, supra, and no more.

But the appellant contends that the Governor-General had no power to grant the railroad company the right to construct wharfs on the foreshore land and to establish a spur extension on the fill; that Act No. 1497 does not authorize the Governor-General to grant railroad rights of way on foreshore land; and that Act No. 2053, amending the first paragraph of article 2 of Act No. 1497 is repealed by the latest Public Land Act (Act No. 2874) which provides that foreshore land "shall be disposed of to private parties by lease only and not otherwise, as soon as the Governor-General, upon recommendation by the Secretary of Agriculture and Natural Resources, shall declare that the same are not necessary for the public service and are open to disposition" under Chapter 9 of the Act.

Paragraph 1 of article 2 of Act No. 1497 reads as follows :

"2. Under and by virtue hereof the right of way through the public lands of the Philippine Government is hereby given and granted to the grantee for the construction, operation, and maintenance of the railroad or railroads as herein authorized to the extent of one hundred feet in width where it may pass through the public domain, including all necessary ground for depots, machine shops, station buildings, workshops, water stations, warehouses, terminals, including wharves and dock fronts, switches, sidetracks, and turntables, and also such extra lands beyond such one hundred feet as may be found necessary for said purposes: Provided, That the same be approved by the Governor-General as a part of the definite plans herein- before provided for, and the right, power, and authority shall thereunder be given to said grantee, with the written approval of the Governor-General, to open and work quarries and gravel pits upon any public lands and take from such lands earth, stone, timber, and other materials for the construction of such railway; but the provisions of this paragraph shall only apply to public lands available for homestead settlement or for sale under the Public Land Act, or to timber lands of the Philippine Government, and shall not apply to lands used and assigned for other public purposes, nor to the lands known as the friars' lands."

The amendment brought about by Act No. 2053 is as follows:

"Provided further, That the provisions of this paragraph shall also apply to. the foreshore, as defined in existing law, and to all Government and public lands made or reclaimed by the Government by dredging or filling, or otherwise, unless such land shall have been used or assigned for other public purposes; and such foreshore, or

other land, hereby granted to the grantee, is hereby taken out of the operation of Act Numbered Sixteen hundred and fifty-four of the Philippine Commission: And provided further, That the quantity of land or width of right of way which, by virtue of this Act, may be acquired by the railway company for right of way or other railway uses upon the foreshore or reclaimed land shall be determined by the Governor- General.

Act No. 2053 was enacted on February 3, 1911, and at first sight it may seem that its provision as to foreshore land was repealed by Act No. 2874, but on further consideration, we do not think that the latter Act has any application to the present case. The railway company does not claim title to the retention wall and the fill; that belongs to the Government for the benefit of the public. The extension spur is also more for the benefit of the public than for the company; it saves the public the rather expensive freight across the river and the truckage to La Paz railroad station, and it also saves the Iloilo passengers the expense of vehicle transportation to and from La Paz station. It is also an important aid to navigation in that the ships can load and unload cargo from and on the quay instead of unimproved shore. The improvements are, therefore, more of a Government enterprise than a private one.

Under the circumstances, the fact that the improvements were made by a private corporation is immaterial. With the exception of the rails and ties, the improvements in question belong to the Government, and there is, of course, nothing to prevent the State from having satisfactory harbor improvements executed by a private concern.

Attention is also called to section 74 of the Organic Act of July 1, 1902, which provides that "the Government of the Philippine Islands may grant franchises, privileges, and concessions, including the authority to exercise the right of eminent domain for the construction and operation of works of public utility and service, and may authorize said works to be constructed and maintained over and across the public property of the United States, including streets, highways, squares, and reservations, and over similar property of the Government of said Islands. * * *."

A railroad is a public utility, and if the Government of the Philippine Islands can grant a railway the right to run tracks along finished streets and other public property of a similar nature, we can see no reason why it may not also grant the right to run tracks over a finished wharf without requiring the railroad to take out a lease under Act No. 2874, and certainly it cannot have been the intent of the legislators that the formalities required for leases under that Act should be observed in a case such as this.

In any event, the railroad company is exercising its right to run the extension spur on the water front of the harbor under claim and color of law, and only the Government can question the validity of the assumption and exercise of such rights; a private individual cannot successfully assail them in a collateral proceeding (25 R. C. L., 1148; 29 Cyc, 327).

It is also well settled that a private individual cannot successfully bring an action such as this unless he has received special damage over and above that sustained by the public generally. (Seeley vs. Bishop, 19 Conn., 128; Innis vs. Cedar Rapids, etc., R. Co., 76 Iowa, 165; Low vs. Knowlton, 26 Me., 128; Breed vs. Lynn, 126 Mass., 367; Potter vs. Indiana, etc., R. Co., 95 Mich., 389; Lansing vs. Smith, 8 Cow., 146; Miller vs. Hare, 43 W. Va., 647; Clark vs. Chicago, etc., R. Co., 70 Wis., 593.)

As we have already seen, the plaintiff cannot claim damages for being prevented from operating his shipyard without grant, license, or permit from competent authority. Neither is he entitled to the injunction prayed for in his complaint; "it is only where the injury is general and public in its effects, and no private right is violated, in contradistinction to the rights of the rest of the public, that individuals are precluded from bringing private suits for the violation of their individual rights." (14 R. C. L., 329.) In the present case there is no violation of private rights.

The appealed judgment is affirmed with the costs against the appellant. So ordered.
Johnson, Street, Malcolm, Villamor, Johns, Romualdez and Villa-Real, JJ., concur.

[1] Act No. 1223.

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