

DOMINADOR GOMEZ, PLAINTIFF AND APPELLANT, VS. HONORIO VENTURA, SECRETARY OF THE INTERIOR OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS, AND THE BOARD OF MEDICAL EXAMINERS OF THE P...

G. R. No. 32441. March 29, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

In this cause, the plaintiff prays for judgment, as follows:

"1. Annulling and setting aside the aforementioned investigation proceedings, and particularly the decision of the Board of Medical Examiners of the Philippine Islands dated March 30, 1926, forever revoking the plaintiff's license to practice medicine and surgery.

"2. Ordering the defendants to restore the plaintiff to his status before the investigation and the decision of March 30, 1926 that is, as if there had never been an investigation and an adverse decision.

"3. Ordering said defendants to issue in favor of the plaintiff a license for the practice of medicine and surgery in the Philippine Islands, such as he had prior to the investigation and adverse decision.

"4. Granting the plaintiff any other proper legal remedy." (Pages 5 and 6, bill of exceptions.)

The defendants answered with a general denial and prayed that the complaint be dismissed.

After trial the Court of First Instance of Manila dismissed the complaint with costs against the plaintiff.

Counsel for plaintiff contends that the court below erred:

"1. In holding that Assistant Fiscal Alfonso Felix of the City of Manila was authorized to appear and institute administrative proceedings against Dr. Dominador Gomez before the Board of Medical Examiners of the Philippines.

"2. In not holding that Assistant Fiscal Alfonso Felix, of the City of Manila, had no personality nor power to institute administrative proceedings against Dr. Dominador Gomez before the Board of Medical Examiners of the Philippines.

"3. In admitting in its decision that section 9 of Act No. 2381, known as the Opium Law, is valid.

"4. In not holding that section 9 of Act No. 2381, known as the Opium Law, is unconstitutional, and therefore null and void.

"5. In holding that section 9 of Act No. 2381, known as the Opium Law, is in force.

"6. In not holding that section 9 of Act No. 2381 has been repealed, even on the supposition that it was valid.

"7. In rendering the judgment appealed from.

"8. In denying the motion for avoidance, and for a new trial, filed by the appellant."

The first two assignments of error relate to the validity of the charges against the plaintiff, preferred by Assistant Fiscal Alfonso Felix of the City of Manila, who, according to the plaintiff is not authorized by law to file charges with the Board of Medical Examiners, which therefore acquired no jurisdiction over the matter.

According to section 780 of the Administrative Code, as amended by Act No. 3111, the procedure to be observed in revoking a certificate of registration is the following:

"Proceedings for revocation of a certificate of registration shall be begun by filing a written charge or charges against the "accused. These charges may be preferred by any person or persons, firm or corporation, or the Board of Medical Examiners itself may direct its executive officer to prepare said charges. Said charges shall be filed with the executive officer of the Board of Medical Examiners and a copy thereof, together with written notice of the time and place when they will be heard and determined, shall be served upon the accused or his counsel, at least two weeks before the date actually fixed for said hearing." (Sec. 12, Act No. 3111.)

The law does not require that the charges be preferred by a public officer or by any specified person; it even permits the Board of Medical Examiners itself to require its executive officer to prefer said charges. From the wording of the law we infer that any person, including a public officer, may prefer the charges referred to in the abovequoted provision. Wherefore, the fact that the charges were filed by Assistant Fiscal Alfonso Felix of the City of Manila, does not deprive the Board of Medical Examiners of jurisdiction to hear said charges and to take the proper action according to law.

The appellant contends in his third and fourth assignments of error that section 9 of Act No. 2381 is null and void on the ground of unconstitutionality, since said section is foreign to the subject of said Act, in violation of section 3 of the Jones Law prohibiting the enactment of any bill embracing more than one subject and providing that the subject be expressed in the title of the bill.

Our opinion is that the matter contained in section 9 of Act No. 2381 is not foreign to the end pursued in said Act, and that in view of the provision of said section it cannot be maintained that Act No. 2381 includes more than one subject. The penalty provided in said section for the physician or dentist who prescribes opium for a patient whose physical condition does not require the use of said drug, is one of the means employed by the Legislature to attain the purpose of Act No. 2381, which is, to prohibit unnecessary use of opium; it is one of the details subordinate to the purpose in view. Such punishment is not the end contemplated in Act No. 2381, but, as we have just said, it is a means employed to regulate the use of opium.

In passing said Act No. 2381, the Legislature merely exercised the police power expressly granted by the Act of Congress of March 3, 1905, for the protection of the health, comfort, and general welfare of the people of the Philippine Islands.

"ID.; ID.; POWER OF PHILIPPINE LEGISLATURE TO LEGISLATE UPON THE SUBJECT.—The Philippine Legislature is expressly authorized by the Act of Congress of March 3, 1905, to adopt legislation upon the importation and sale of opium in the Philippine Islands. The purpose of such legislation was to protect the health, comfort, and general welfare of the people of the Philippine Islands. Such legislation was an exercise of the police power of the State." (United States vs. Wayne Shoup, 35 Phil., 56.)

And, as we have stated, the provisions contained in section 9 of Act No. 2381 relative to physicians and dentists, are simply details and means conducive to the ultimate purpose of said Act, which details and means need not be stated in the title of the Act for the very reason that, properly speaking, they are not foreign matter.

"The general purpose of these provisions is accomplished when a law has but one general object, which is fairly indicated by its title. To require every end and means necessary or convenient for the accomplishment of

this general object to be provided for by a separate act relating to that alone, would not only be unreasonable, but would actually render legislation impossible." (Cooley on Constitutional Limitations, pp. 296-297.)

"The constitutional requirement is addressed to the subject, not to the details of the act. The subject must be single; the provisions, to accomplish the object involved in that subject, may be multifarious. * * * None of the provisions of a statute will be held unconstitutional When they all relate, directly or indirectly, to the same subject, have a natural connection, and are not foreign to the subject expressed in the title. As very frequently expressed by the courts, any provisions that are germane to the subject expressed in the title may properly be included in the act." (I Sutherland on Stat, Const., par. 118.)

In order to hold that section 9 of. Act No. 2381 is unconstitutional on the ground alleged by the plaintiff, the violation of the constitutional provision must be substantial and manifest. It is not so in the case at bar.

"2. To warrant the setting aside of statutes because their subjects are not expressed in the titles, the violation of the rule must be substantial and plain." (Posadas vs. Menzi, Decision of the United States Supreme Court, page 388, No. 11, May 15, 1929, United States Supreme Court Advance Opinions.)

At all events the validity of this Opium Law, Act No. 2381, has already been upheld by this court, not only in the above cited case, United States vs. Wayne Shoup, supra, but also in the subsequent case of United States vs. Jao Li Sing (37 Phil., 211).

Passing to the fifth and sixth assignments of error, wherein counsel for appellant contends that even granting that section 9 of Act No. 2381 is valid, it was repealed by Act No. 2493 and later by section 780 of the Administrative Code, we note, first, that there is no express repeal of section 9 of Act No. 2381. Secondly, it cannot be held that it has been impliedly repealed, for the reason that the provisions of section 9, Act No. 2381, are neither contrary to, nor incompatible with, the provisions of section 780 of the Administrative Code, as amended. Upon this point, we approve and adopt the following statements made by the trial judge:

"Counsel contends, in support of the above, that Act No. 2493 being complete, and 'covering the field' by implication repealed all laws relating to the practice of medicine, powers of the Board of Medical Examiners and allied matters; hence, the said law, expressly providing the causes for revocation of medical licenses, necessarily excluded all others, even though embodied in prior enactments.

"Act No. 310 provided that the Board of Medical Examiners could revoke licenses for 'unprofessional conduct,' without defining the term. Act No. 1761 (the Opium Law) provided that illegally prescribing opium should be cause for revocation of medical licenses. Clearly, the Opium Law did not repeal Act No. 310. Act No. 2381—also an Opium Law—in its section 9, repeated the provision as to doctors and dentists. The repetition did not repeal Act No. 310. Act No. 2493, section 11 (Ad. Code, sec. 780), provided that certificates of physicians are revokable for 'unprofessional conduct,' without defining the phrase. In other words, so far as revocation of licenses is concerned, Act No. 2493 is a mere reenactment of Act No. 310. The reenactment of the said portion of Act No. 310 did not repeal section 9 of the Opium Law. If said section 9 has been repealed, it must be by Act No. 3111, which amends Act No. 2493 (Ad. Code, sec. 780), by an addition after the words 'unprofessional conduct' of the following:

" 'The words "unprofessional, immoral, or dishonorable conduct" as used in this chapter shall be construed to include the following acts: (1) Procuring, aiding or abetting a criminal abortion; (2) advertising, either in his own name or in the name of any other person, firm, association, or corporation, in any written or printed paper, or document, of medical business in which untruthful or improbable promises are made, or being employed by, or in the service of any person, firm, association or corporation so advertising, or advertising in any obscene manner derogatory to good morals; (3) habitual intemperance or addition to the use of morphine, opium, cocaine, or other drugs having a similar effect; (4) conviction of a crime or misdemeanor involving dishonorable conduct; and (5) willfully betraying a professional secret.'

"It cannot be seriously contended that aside from the five examples specified there can be no other conduct of a physician deemed 'unprofessional.' Nor can it be convincingly argued that the Legislature intended to wipe out all other forms of 'unprofessional' conduct theretofore deemed grounds for revocation of licenses. The maxim *expressio unius est exclusio alterius* should be applied only as a means of discovering legislative intent and should not be permitted to defeat the plain indicated purpose of the Legislature. It does not apply when words are mentioned by way of example, or to remove doubts. (See Cyc, 1122.) If, therefore, there exists 'unprofessional conduct' not specified in the laws, with more reason does the criminal use of opium remain a specific cause for revocation of license." (Pages 11, 12 and 13, bill of exceptions.)

As to the seventh and eighth assignments of error, we find the judgment appealed from correctly rendered, and the motion of avoidance and new trial properly denied.

As the Attorney-General correctly observes, the powers vested in the Board of Medical Examiners to suspend or revoke a physician's certificate of registration and the authority granted the Secretary of the Interior of confirming or reversing the decision of said board of examiners, partake of a quasi-judicial character, that is, involve the use of discretion. For this reason, the exercise thereof cannot be reviewed by mandamus, which is the nature of this cause on its merits.

"As in the case of courts and judicial officers, it is a rule of general application that mandamus will, not lie to review or control the acts of executive officers and boards of state and federal governments in respect of matters as to which they are vested with discretion. In other words, they cannot be compelled to act or render a decision in any particular way, and this is so, even though the exercise of this discretion requires the construction and interpretation of statutes. Where public officials exercise their discretion, it is said that their conclusions, although disputable, are impregnable to mandamus." (38 C. J., 659-660.)

That this action is really a mandamus proceeding, appears clearly from the terms of the complaint filed herein.

Finding no merit in the assignments of error, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur. Villamor, J., reserves his vote.

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