

**SMITH, BELL &#038; CO., LTD., PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF ZAMBOANGA AND CARLOS DOMINGUEZ, MUNICIPAL TREASURER OF ZAMBOANGA, DEFENDANTS AND APPELLANTS.**

*G.R. No. 33318. December 20, 1930*

Ponente: JOHNS, J.

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**JOHNS, J.:**

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In its opinion the lower court says:

"The powers of a municipal council to impose taxes are defined in sections 2625 and 2628 of the Administrative Code.

"The court, after studying these sections, finds that, although the defendant municipal corporation may issue licenses, fixing the fees to be paid therefor, for professions, businesses, and establishments classified in section 2625 of the Administrative Code, subsection (d), this power does not, in the judgment of the court, extend to the establishment and operation of steam engines, since subsection (c) of said section 2625 only authorizes the defendant corporation to regulate the establishment and operation of such steam engines. If the intention of the Legislature had been different, that is, if it had intended that municipalities might, through their municipal councils, collect license taxes for the establishment of steam engines mentioned in subsection (c) of the aforesaid section 2625, it would have included these activities in subsection (d) of that section.

"Wherefore, the court believes that the defendant municipal corporation has no authority to impose license taxes on the plaintiff company for the establishment in its office of a machine for baling hemp, and that ordinance No. 226 of the defendant municipal corporation, series of 1928, in so far as it imposes such a license tax, is null and void."

In his. brief for the appellants the Attorney-General says:

"We agree with the above-quoted observations of the lower court. It, however, overlooked the existence of Act No. 3422 which took effect on January 1, 1928, that is, one year prior to the promulgation of municipal-ordinance No. 226, series of 1928, of Zamboanga. Section 1 of said Act says:

"Section 1. A municipal council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality, by requiring them to secure licenses at rates fixed by the municipal council, and to collect fees and charges for services rendered by the municipality, and shall otherwise have power to levy for public local purposes just and uniform taxes other than percentage taxes and taxes on specified articles: Provided, etc"

The Attorney-General then says:

"The above quoted provision authorizes a municipal council to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality. It is true it contains a proviso placing it beyond the power of the municipal council to impose taxes, charges, and fees on certain business, occupations and privileges enumerated therein, but the operation of a motor machine for baling hemp is not one of them."

"4. That many years before this year (1929) the plaintiff has been and is still engaged in the said municipality of Zamboanga in the purchase and sale of hemp, having all the time duly paid all internal revenue taxes and imposts for conducting and in connection with said business.

"5. That as dealer in hemp, the plaintiff owns a machine operated by motor for baling hemp, which machine is located in the municipality of Zamboanga."

That is to say, that it is agreed that when the ordinance was passed, the plaintiff was engaged in the purchase and sale of hemp in the municipality of Zamboanga, and that it has paid all of the taxes and imposts for that business, and that it owns a "motor for baling hemp," which machine is located in the municipality. That is to say, the motor of the plaintiff upon which it was required to pay the license is connected with, incidental to, and a part of, plaintiff's business in the sale and purchase of hemp, and that it has paid all taxes to the government for the operation and conduct of its business. It may be that a motor is not an incident to the purchase of hemp, but even so, it must be conceded that it is incidental to the sale and shipping of hemp.

The purpose and intent of the ordinance is apparent upon its face. It provides that no person, company or corporation shall commence or establish any business or enjoy any of the privileges hereinafter mentioned without first applying for the necessary authority from the municipal president and the payment to the municipal treasury of the taxes imposed upon such business or privilege, and that there shall be collected a day tax payable in advance before enjoying the privilege of the license—

"Section 2307 of Act Numbered 2711, and all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

That is to say, to operate and enjoy its business in Zamboanga, plaintiff is required to pay P1.00 per annum as a condition precedent to the use of its engine for the baling of hemp in connection with its business. Again, it is conceded that the ordinance in question was not approved by the Secretary of the Interior and the Secretary of Finance, and section 2 of Act No. 3422 expressly provides that without the approval of that official, the municipal council has no authority to impose municipal license taxes on a business covered by the provisions of this section, if the tax is in excess of P25 per annum. Again, the Attorney-General concedes that under subsection (d) of section 2625 of the Administrative Code, the municipal council does not have the power to levy the tax in question, but contends that it does have the power under Act No. 3422, which went into effect on January 1, 1928, one year prior to the passage of the ordinance in question. The appellee contends that Act No. 3422 does not repeal subsection (d) of section 2625, and that it is now in force in Mindanao and Sulu. It is true that section 3 repeals not only section 2307 of the Administrative Code, but also "all acts or parts of acts inconsistent with the provisions of this Act." But it will be noted that while specific reference is made to section 2307 of the Administrative Code, no reference whatever is made to subsection (d) of section 2625 of the Administrative Code, and, hence, it must follow that if subsection (d) of section 2625 is repealed, it is repealed by implication and by implication only, and such repeals are not favored by the courts. Again, all general laws of the Philippine Islands are not in force and do not apply to Mindanao and Sulu. Hence, it follows. that, for such reason, if the Legislature had intended to repeal subsection (d) of section 2625 of the Administrative Code, it would have also made specific reference in the repealing clause to that section. All things considered, the judgment of the lower court is

affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Malcolm, Ostrand and Romualdez, JJ., concur.

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### DISSENTING

Street, J.:

I am unable to concur in the conclusions reached by the court in this case and am constrained to record my dissent. In the first place, the decision has the undesirable consequence of materially increasing the difficulties of the Legislature in making general laws for the Philippine Islands; and in the second place, the legal considerations involved lead me to the conclusion that municipal ordinance No. 226, series of 1928, of the municipality of Zamboanga, in the part with which we are here concerned, is valid.

As we are all aware, the various municipalities in the Islands have for years been hampered for lack of revenue,—a situation which has made it impossible for these governmental divisions properly to perform the duties incumbent upon them. In the Administrative Code and the laws upon which that Code was based, the activities upon which municipal license taxes could be levied were strictly limited, with the result that new and prosperous activities resulting from the development of the wealth of the country could not be reached by the municipal authorities. No general power was conceded to municipal councils to use their discretion in extending the range of the license taxes. In view of this situation, the Philippine Legislature, about three years ago, attempted to remedy the embarrassment of the municipalities by giving them a general power to levy, for local public purposes, just and uniform license taxes. This was accomplished by Act No. 8422 of the Philippine Legislature. The first section of this Act, however, contains a proviso excepting from municipal taxation certain activities already subject to general taxes through the Bureau of Internal Revenue. As will be readily seen this law proceeds in an inverse direction from that pursued in the previous legislation, in that, whereas the municipal councils had previously exercised a power of taxation over certain subjects only, they were now given general authority subject to denned exceptions. The exceptions specified in the proviso to section 1 of Act No. 3422 need not here detain us, since they have no relation to the point now in controversy.

The first major proposition contained in the opinion of the court appears to be this: The baling of hemp is incidental to the buying and selling of hemp; and inasmuch as the selling of hemp,—an activity in which the plaintiff has long been engaged,—is already subject to the internal-revenue tax (sales tax) on business, the operation of a motor for the baling of hemp cannot be made the subject of an additional license tax under Act No. 3422. I am at a loss to discover any just basis for this conclusion. The baling of hemp has about the same relation to the selling of hemp as the baling of cotton has to the selling of cotton, or that the running of a saw mill has to the selling of lumber. Yet we have, not seen it suggested that these activities could not be separately taxed by competent law-making power. A man can be a buyer and seller of hemp without running a motor for baling the commodity. There is no necessary connection whatever between the two activities.

It will be noted, furthermore, that the proposition accepted in the opinion of the court to the effect that the baling of hemp cannot be taxed because the baling of hemp is incidental to the buying and selling of hemp, is a proposition fatal to the imposition of such a tax as that with which we are here concerned in any municipality in the Islands, whether located in the Department of Mindanao and Sulu or in the municipalities found in the regularly organized provinces. In other words we are not here dealing with the validity of an ordinance in its local application, but with a general principle of taxation, and I think that the doctrine announced by the court on this feature of the case is erroneous.

A second major proposition deducible from the opinion of the court, as I understand it, is that Act No. 3422 is not applicable to municipal councils in the Department of Mindanao and Sulu, for the reason that subsection (d) of section 2625 of the Administrative Code is not expressly mentioned, in the repealing provision of Act No. 3422, as one of the laws or parts of laws repealed by that Act. The language of the repealing provision, however, reads as follows:

"Section 2307 of Act Numbered 2711, and all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

And it is my opinion that subsection (d) of section 2625 of Act No. 2711 is repealed, since it is a part of Act No. 2711 which is inconsistent with the provisions of Act No. 3422. To my mind the language used in the repealing provision clearly shows an intention on the part of the Legislature to sweep away inconsistent provisions for the purpose of arriving at uniformity and consistency, an end most desirable in laws relating to the exercise of the powers of taxation. It is an unjust burden to impose upon the Legislature the obligation of searching through the great pile of existing laws in order to make express reference to every prior provision of law that ought to be repealed by the new legislation. It is the duty of the court to discover the intent of the Legislature and to give effect to the same as it is expressed in the law.

It might be supposed that the decision of the court finds support in the familiar proposition that a general law will not be construed to repeal a local or special Act, unless expressly mentioned in the repealing provision. There is undoubtedly such a rule, but after all it is intended as a mere aid to interpretation; and the following language from Sutherland's treatise on Statutory Construction indicates somewhat of the application that should be given to it:

"There is no rule of law which prohibits the repeal of a special act by a general one, nor is there any principle forbidding such repeal without the use of words declarative of that intent. The question is always one of intention, and the purpose to abrogate the particular enactment by a later general statute is sufficiently manifested when the provisions of both cannot stand together. A special and local law provided that certain property should be subject to taxation; a subsequent general one provided that all such property should be exempt, and repealed all local or special acts inconsistent with its provisions. It was held that the special act was repealed. Special or local laws will be repealed by general laws when the intention to do so is manifest, as where the latter are intended to establish uniform rules for the whole state." (Lewis' Sutherland Statutory Construction, 2d ed., sec. 276.)

Another author, speaking with respect to the meaning and application of the well-known rule that a (general affirmative Act will not be construed to repeal a local or special statute unless it be specially mentioned, says:

"The question is always one of intention and the purpose to abrogate the particular enactment by a later general one is sufficiently manifested when the two acts are so irreconcilably inconsistent or repugnant that both cannot stand together. Such intention may also be made to appear by the words of the general act, by the subject-matter with which the general act is concerned, by other legislation on the same matter, by the surrounding circumstances, by the purpose to be accomplished, or by anything else to which reference may properly be had for the purpose of discovering the legislative intent. Thus where the clear general intent of the legislature is to establish a uniform system throughout the state, the presumption must be that local acts are intended to be repealed." (36 Cyc, pp, 1089-1090.)

Furthermore, it should be borne in mind that the rule under consideration had its origin in the situation where the local or special law under contemplation is contained in a distinct special Act dealing with a special or local subject matter. Section 2625, subsection (d), of the Administrative Code is not a local or special law in this sense. That provision is found in a, general law,—one of the most general and comprehensive that the Legislature has

ever adopted, namely, in the Administrative Code. So far as I am aware, the rule that a general law will not be construed to repeal a local or special Act has never been so applied as to prevent a general repealer from operating on a provision of local application in a comprehensive general statute. In the case before us the Legislature expressly repealed one section of Act No. 2711; and there is no good reason, in my opinion, why the expression "parts of Acts," in the repealing clause, should not be applied to parts of that same Act No. 2711.

But there is another consideration conducing to the conclusion that Act No. 3422 is a law applicable generally to all municipal councils in the Philippine Islands. In section 2 of the Administrative Code the term "municipality" is denned in the following language: " 'Municipality' refers to municipalities proper and except as otherwise specially provided does not include chartered city, township, municipal district, or other local political division." This definition is not merely a definition of the term as it is used in the Administrative Code but a definition of the term as it is used generally in our statutes; and though it would be entirely within the power of the Legislature to depart from that meaning, an intention to do so is not to be presumed. Now, it will be noted that no distinction is drawn in the definition between municipalities located in the regularly organized provinces and municipalities located in the Department of Mindanao and Sulu. Nor is any sufficient reason apparent why the Legislature, in passing Act No. 3422, should have intended to make any such distinction. The municipalities in the Department of Mindanao and Sulu have been given the corporate organization of municipalities for the very reason that those communities have been found sufficiently advanced and developed to justify clothing them with powers analogous to those conferred upon municipalities in the regularly organized provinces. The conclusion is that the law having made no distinction between municipalities contained in the regularly organized provinces and the municipalities contained in the Department of Mindanao and Sulu, this court should make none. Of course, the term "municipal council," as used in Act No. 3422, should be construed along parallel lines, with the consequence that the Legislature meant to include under this term the municipal councils of municipalities generally throughout the Islands.

There is only one other feature of the decision to which attention need be directed, which is the part wherein it is declared that the ordinance in question is invalid for lack of approval by the Secretary of the Interior and the Secretary of Finance, as contemplated in section 2 of Act No. 3422. But an analysis of that provision shows that the approval of these officers is only necessary where an ordinance imposes a license tax on a business or occupation already taxed under the Internal Revenue Law. But no internal-revenue tax has ever been levied upon the baling of hemp; and, as we have already indicated, this activity ought not to be considered as included in the selling of hemp. It results, therefore, that the approval of the two secretaries referred to is not necessary.

In my opinion the judgment which is the subject of appeal should be reversed.

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### DISSENTING

Villamor and Villa-Real, JJ.:

We concur in the above dissenting opinion.

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