

FELIPE BELARMINO, PLAINTIFF AND APPELLANT, VS. C. C. HAMMOND, INSULAR AUDITOR OF THE PHILIPPINES, AND THE DIRECTOR OF PUBLIC WORKS, DEFENDANTS AND APPELLEES.

G.R. No. 34313. January 18, 1932

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Felipe Belarmino, the plaintiff, had been operating a motor truck since May, 1929, and in June, 1930, defendant Insular Auditor recommended to the Director of Public Works, the other defendant, the suspension of the operation of his truck, and the latter ordered the suspension.

The plaintiff alleges that he has paid the registration fee for this truck, and asks the court to enjoin the defendants from acting upon the suspension. The defendants contend that he has not paid the fee, and in a counterclaim ask that he be ordered to pay the Government P95.84, the amount of such fee.

After reviewing the evidence, we find that the plaintiff has paid the 1929 registration fee for the truck in question. The plaintiff's son, Amador, testified that in obedience to his father, he went to the Bureau of Public Works to pay the fee, and delivered the money to an employee in charge of one of the windows, who gave him a receipt. He took it to another window, where he was given the number plate by another employee. Some months later, the plaintiff received the registration certificate by mail. The plaintiff, however, says that he has lost the receipt and therefore was unable to produce it at the trial.

Salustiano Reyes, superintendent of the automobile division of the Bureau of Public Works, who testified for the defendants, says that according to the Motor Vehicle Register, the 1929 fee for this truck was paid, the official receipt for it being No. 6291289. Such an entry in the book, he says, is not made until the fee is paid and the plate is not delivered unless the receipt is presented.

The defense has shown that the duplicate copy of receipt No. 6291289, in the Bureau of Public Works, is made out in another person's name for the amount of only P1; this is not what the plaintiff had to pay for the registration of his truck.

The testimony of the plaintiff's son, who paid the registration fee for the truck, proves that such fee was paid. He is borne out by the entry in the official book of the Bureau of Public Works, and by the fact that the plaintiff received the proper number plate; for even according to the evidence furnished by the defendants, that entry could not have been made in the book if such fees had not been paid, and the plate would not have been delivered if the official receipt of this payment had not been exhibited at the proper window; and these circumstances take on added weight from the additional fact that in these transactions, several employees took part.

The fact that the plaintiff has lost the official receipt, which is not at all unlikely, does not justify a contrary conclusion. Nor does the fact that the duplicate receipt was made out in somebody else's name do so, for this may be due to misconduct on the part of some Public Works employees, independent of the plaintiff. Salustiano Reyes

testified that cases had come to light in his office of duplicate receipts made out for different amounts from those collected. We are convinced that this is one of those cases, for the plaintiff has proved that he paid the proper fee.

Not only does the entry in the official book, and the delivery of the number plate corroborate the plaintiff's son; but they are incompatible with the contention that the payment was not made. There is nothing to show that the entry was a mistake, and even if it were, the plaintiff has not been shown to have been aware of the mistake so that he could take advantage of it by pretending to have paid, without having done so. Nothing short of an unlawful connivance between the plaintiff and the employee who made the entry would justify our finding that the payment was not made, although the books show it was. The record contains no proof of such connivance, and it cannot be justly presumed.

Holding, as we do, that the plaintiff paid the fee for the operation of his motor truck, the fact that the employee who received the money did not turn it in as he should have done, is no reason for requiring the plaintiff to pay a second time. The money was received by an employee in the performance of his official duties, and this was all the plaintiff was bound to see to. He was by no means under obligation to watch and see what the man did with the money, nor would he have been justified, to protect himself, in interfering with the business of the bureau in order to make sure that the employee deposited the money in the safe.

The judgment appealed from is affirmed so far as it confirms and declares permanent the preliminary injunction issued against the defendants, and reversed so far as it order the plaintiff to pay the defendants the sum of P95.84, for the plaintiff is hereby absolved from the counterclaim; without special pronouncement as to costs. So ordered.

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

JOHNSON, J.:

I vote to confirm.

DISSENTING

OSTRAND, J.

I regret that I cannot agree with the majority of the court in this case. The difficulty is that it seems to have overlooked the fact that the registration fees for motor vehicles go to the Insular Treasury and belong to the Government. In order to operate a motor vehicle, the owner is bound to pay the registration fees to the Government; the fee is usually delivered to the employees in the Bureau of Public Works and from there is covered into the Insular Treasury for the Government's use.

In the present case the plaintiff's son may possibly and honestly have paid the fees to public agents or servants in the Bureau of Public Works, but it is clear that the money never reached the Government, and the consequence was that the plaintiff operated his auto-truck illegally during the year 1929 by reason of the failure to give the Government its due.

Exhibit D of the record of the case gives a fair idea of what employees have sometimes done in the automobile division of the Bureau of Public Works. In the months of May and June, 1929, two employees in the division, Nicanor Mananes and Alberto Limquenco, obtained possession of a blank official receipt book containing Nos. 6293201 to 6293300, inclusive, and in combination with an employee of the Pacific Commercial Company, filled out and issued eight of the receipts by forging the signature of one Andres Gutierrez, another employee of the automobile division, and by deceiving the Pacific Commercial Company, received several hundred pesos for their

own personal use, but to the "damage and prejudice of the said Pacific Commercial Company" (quoted from the complaint). Nicanor Mananes pleaded guilty, and in October, 1929, he was sentenced to eight years and one day of prison mayor and to a fine of 250 pesetas.

The irregularity in this case has much in common with the operations of Nicanor Mananes et al. in the Pacific Commercial Company. The plaintiff maintains that he lost the original official receipt, but it is not disputed that the duplicate of the same original official receipt has the same printed number as the original; it is clear that its signature is a forgery of Andres Gutierrez' handwriting and is probably the work of Mananes.

It may be noted that the alleged registration of the autotruck in question was made on May 4, 1929, very shortly before the Pacific Commercial Company was swindled by Mananes and his assistants. The forgery in the present case was discovered a few months afterwards by the auditor who examined the accounts of the automobile division of the Bureau of Public Works. It was found in the Motor Vehicle Register that among many entries relating to the plaintiff's auto-truck, the original official receipt had the number of A-6291289 and that the registration fee amounted to P64.56.

The Motor Vehicle Registration Book contains the important features of the automobiles and remains in the automobile division. Up to the year 1929 the book was probably not often consulted by the auditors.

The official receipts for the registration fees are bound in books of 100 original receipts. In the same book a duplicate and a triplicate are attached to each original official receipt. When an official receipt is written and issued, the rule is that the corresponding duplicate and triplicate must be copied by carbon paper laid under the original. The official receipt is written on yellow paper and is delivered to the owner of the motor vehicle. The duplicate goes to the office of the Insular Auditor for accounting, but the triplicate is kept in the automobile division.

In the present case the person who issued the official receipt No. 6291289 for the registration fee in question evidently did not copy the duplicate and triplicate until the original official receipt was delivered to the son of the plaintiff, and it was then a simple matter to take the duplicate and triplicate and convert them into an "expired temporary permit" for a motor cycle at a sum of only P1. As the duplicate carried exactly the same printed numbers as the original, it was turned over to the Auditor for the audit of the lone peso, and the person who issued the original receipt took the P64.56 for his own use or, perhaps, in part, for his companions.

In sections 2, 3, and 4 of Act No. 3045 it is prescribed that private owners operating their motor vehicles on the public highways must pay registration fees to the Government at the rates provided in said sections. As we have seen, the registration fees due from the plaintiff were not paid to the Government in 1929, notwithstanding the fact that the motor vehicle had operated on the public highways. Can we then say that the Government may not be permitted to collect the fee? As far as I can see, this court is exceeding its jurisdiction in peremptorily depriving the Government of its legal dues.

It may, perhaps, be said that the Government is responsible for the misfeasance of its employees, but such cannot be the case in our jurisdiction. The United States Government is not liable for the torts of its employees, and the Philippine Government, being a branch of the former, has the same privilege.

There is no lack of authorities upon the point in question.

In the case of *Gibbons vs. United States* (8 Wall., 269), Justice Miller said:

"No government has ever held itself liable to individuals for the misfeasance, laches or unauthorized exercise of power by its officers and agents.

"In the language of Judge Story, 'It does not undertake to guarantee to any person the fidelity of any of the officers or agents whom it employs, since that would involve it in all its operations in endless embarrassments, and difficulties, and losses, which would be subversive of the public interests.' "

In the case of *Lee vs. Munroe and Thornton* (7 Cranch, 366), Justice Livingston said: "It is better that an individual should now and then suffer by such mistakes than to introduce a rule, against an abuse of which, by improper collusions, it should be very difficult for the public to protect itself."

The action against the Insular Auditor and the Director of Public Works is apparently against the two public officers but is in reality a suit against the Government or the State itself. As to such cases, Justice Pitney in the decision of the United States Supreme Court in *Ex Parte State of New York* (256 U. S., 490), said:

"That a State may not be sued without its consent is a fundamental rule of jurisprudence having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given: not one brought by citizens of another State, or by citizens or subjects of a foreign State, because of the Eleventh Amendment; and not even one brought by its own citizens, because of the fundamental rule of which the Amendment is but an exemplification. *Beers vs. Arkansas*, 20 How., 527, 529; *Railroad Co. vs. Tennessee*, 101 U. S., 337, 339; *Hans vs. Louisiana*, 134 U. S., 1, 10-17; *North Carolina vs. Temple*, 134 U. S., 22, 30; *Fitts vs. McGhee*, 172 U. S., 516, 524; *Palmer vs. Ohio*, 248 U. S., 32, 34; *Duhne vs. New Jersey*, 251 U. S., 311, 313."

The Government has not given its consent in the present case, and the court is going beyond its jurisdiction. In my opinion the case should be dismissed.

MALCOLM, J.:

I concur in the dissenting opinion of Justice Ostrand except that I vote to affirm the judgment of the trial court.

IMPERIAL, J.:

I concur with Justice Ostrand.

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