

MAURICIO CRUZ, PETITIONER AND APPELLANT, VS. STANTON YOUNGBERG, DIRECTOR OF THE BUREAU OF ANIMAL INDUSTRY, RESPONDENT AND APPELLEE.

G. R. No. 34674. October 26, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition brought originally before the Court of First Instance of Manila for the issuance of a writ of mandatory injunction against the respondent, Stanton Youngberg, as Director of the Bureau of Animal Industry, requiring him to issue a permit for the landing of ten large cattle imported by the petitioner and for the slaughter thereof. The petitioner attacked the constitutionality of Act No. 3155, which at present prohibits the importation of cattle from foreign countries into the Philippine Islands.

Among other things in the allegations of the petition, It is asserted that "Act No. 3155 of the Philippine Legislature was enacted for the sole purpose of preventing the introduction of cattle diseases into the Philippine Islands from foreign countries, as shown by an explanatory note and text of Senate Bill No. 32⁸ as introduced in the Philippine Legislature, * * * The Act in question reads as follows:

"SECTION 1. After March thirty-first, nineteen hundred and twenty-five existing contracts for the importation of cattle into this country to the contrary notwithstanding, it shall be strictly prohibited to import, bring or introduce into the Philippine Islands any cattle from foreign countries: Provided, however, That at any time after said date, the Governor-General, with the concurrence of the presiding officers of both Houses, may raise such prohibition entirely or in part if the conditions of the country make this advisable or if disease among foreign cattle has ceased to be a menace to the agriculture and live stock of the lands.

"SEC. 2. All acts or parts of acts inconsistent with this Act are hereby repealed.

"SEC. 3. This Act shall take effect on its approval.

"Approved, March 8, 1924."

The respondent demurred to the petition on the ground that it did not state facts sufficient to constitute a cause of action. The demurrer was based on two reasons, namely, (1) that if Act No. 3155 were declared unconstitutional and void, the petitioner would not be entitled to the relief demanded because Act No. 3052 would automatically become effective and would prohibit the respondent from giving the permit prayed for; and (2) that Act No. 3155 was constitutional and, therefore, valid.

The court sustained the demurrer and the complaint was dismissed by reason of the failure of the petitioner to file another complaint. From that order of dismissal, the petitioner appealed to this court.

The appellee contends that even if Act No. 3155 be declared unconstitutional by the fact alleged by the petitioner in his complaint, still the petitioner can not be allowed to import cattle from Australia for the reason that, while Act No. 3155 were declared unconstitutional, Act No. 3052 would automatically become effective. Act No. 3052

reads as follows:

"SECTION 1. Section seventeen hundred and sixty-two of Act Numbered Twenty-seven hundred and eleven, known as the Administrative Code, is hereby amended to read as follows:

" 'SEC. 1762. Bringing of animals imported from foreign countries into the Philippine Islands.—It shall be unlawful for any person or corporation to import, bring or introduce live cattle into the Philippine Islands from any foreign country. The Director of Agriculture may, with the approval of the head of the department first had, authorize the importation, bringing or introduction of various classes of thoroughbred cattle from foreign countries for breeding the same to the native cattle of these Islands, and such as may be necessary for the improvement of the breed, not to exceed five hundred head per annum: Provided, however, That the Director of Agriculture shall in all cases permit the importation, bringing or introduction of draft cattle and bovine cattle for the manufacture of serum: Provided, further, That all live cattle from foreign countries the importation, bringing or introduction of which into the Islands is authorized by this Act, shall be submitted to regulations issued by the Director of Agriculture, with the approval of the head of the department, prior to authorizing its transfer to other provinces.

"At the time of the approval of this Act, the Governor-General shall issue regulations and orders to provide against a raising of the price of both fresh and refrigerated meat. The Governor-General also may, by executive order, suspend, this prohibition for a fixed period in case local conditions require it.'

"SEC. 2. This Act shall take effect six months after approval.

"Approved, March 14, 1922."

The petitioner does not present any allegation in regard to Act No. 3052 to show its nullity or unconstitutionality though it appears clearly that in the absence of Act No. 3155 the former act would make it impossible for the Director of the Bureau of Animal Industry to grant the petitioner a permit for the importation of the cattle without the approval of the head of the corresponding department.

"An unconstitutional statute can have no effect to repeal former laws or parts of laws by implication, since, being void, it is not inconsistent with such former laws." (I Lewis' Sutherland, *Statutory Construction* 2d ed., p. 458, citing *McAllister vs. Hamlin*, 83 Cal., 361; 23 Pac., 357; *Orange County vs. Harris*, 97 Cal., 600; 32 Pac., 594; *Carr vs. State*, 127 Ind., 204; 11 L. R. A., 370, etc.)

This court has several times declared that it will not pass upon the constitutionality of statutes unless it is necessary to do so (*McGirr vs. Hamilton and Abreu*, 30 Phil., 563, 568; *Walter E. Olsen & Co. vs. Aldanese and Trinidad*, 43 Phil., 259) but in this case it is not necessary to pass upon the validity of the statute attacked by the petitioner because even if it were declared unconstitutional, the petitioner would not be entitled to relief inasmuch as Act No. 3052 is not in issue.

But aside from the provisions of Act No. 3052, we are of the opinion that Act No. 3155 is entirely valid. As shown in paragraph 8 of the amended petition, the Legislature passed Act No. 3155 to protect the cattle industry of the country and to prevent the introduction of cattle diseases through the importation of foreign cattle. It is now generally recognized that the promotion of industries affecting the public welfare and the development of the resources of the country are objects within the scope of the police power (12 C. J., 927; 6 R. C. L., 203-206 and decisions cited therein; *Reid vs. Colorado*, 187 U. S., 137, 147, 152; *Yeazel vs. Alexander*, 58 111., 254). In this connection it is said in the case of *Punzalan vs. Perriols and Provincial Board of Batangas* (19 Phil., 214), that the provisions of the Act of Congress of July 1, 1902, did not have the effect of denying to the Government of the Philippine Islands the right to the exercise of the sovereign police power in the promotion of the general welfare and the public interest. The facts recited in paragraph 8 of the amended petition shows that at the time the Act No.

3155 was promulgated there was reasonable necessity therefor and it cannot be said that the Legislature exceeded its power in passing the Act. That being so, it is not for this court to avoid or vacate the Act upon constitutional grounds nor will it assume to determine whether the measures are wise or the best that might have been adopted. (6 R. C. L., 243 and decisions cited therein.)

In his third assignment of error the petitioner claims that "The lower court erred in not holding that the power given by Act No. 3155 to the Governor-General to suspend or not, at his discretion, the prohibition provided in the act constitutes an unlawful delegation of the legislative powers." We do not think that such is the case; as Judge Ranney of the Ohio Supreme Court in *Cincinnati, Wilmington and Zanesville Railroad Co. vs. Commissioners of Clinton County* (1 Ohio St., 77, 88) said in such case:

"The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

Under his fourth assignment of error the appellant argues that Act No. 3155 amends section 3 of the Tariff Law, but it will be noted that Act No. 3155 is not an absolute prohibition of the importation of cattle and it does not add any provision to section 3 of the Tariff Law. As stated in the brief of the Attorney-General: "It is a complete statute in itself. It does not make any reference to the Tariff Law. It does not permit the importation of articles, whose importation is prohibited by the Tariff Law. It is not a tariff measure but a quarantine measure, a statute adopted under the police power of the Philippine Government. It is at most a 'supplement' or an 'addition' to the Tariff Law. (See *MacLeary vs. Babcock*, 82 N. E., 453, 455; 169 Ind., 228 for distinction between 'supplemental' and 'amendatory' and *O' Pry vs. U. S.*, 249 U. S., 323; 63 Law. ed., 626, for distinction between 'addition' and 'amend- ment.')"

The decision appealed from is affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, Villa-Real, and Imperial, JJ., concur.

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