

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANICETO BARRIAS, DEFENDANT AND APPELLANT.

G.R. No. 4349. September 24, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

In the Court of First Instance of the city of Manila the defendant was charged with a violation of paragraphs 70 and 83 of Circular No. 397 of the Insular Collector of Customs, duly published in the Official Gazette and approved by the Secretary of Finance and Justice.[1] After a demurrer to the complaint was overruled, it was proved that, being the captain of the lighter Maude, he was moving her and directing her movement, when heavily laden, in the Pasig River, by bamboo poles in the hands of the crew, and without steam, sail, or any other external power. Paragraph 70 of Circular No. 397 reads as follows:

"No heavily loaded casco, lighter, or other similar craft shall be permitted to move in the Pasig River without being towed by steam or moved by other adequate power."

Paragraph 83 reads, in part, as follows:

"For the violation of any of the foregoing regulations, the person offending shall be liable to a fine of not less than P5 and not more than P500, in the discretion of the court."

In this court, counsel for the appellant attacked the validity of paragraph 70 on two grounds: First, that it is unauthorized by section 39 of Act No. 355; and, second, that if the Acts of the Philippine Commission bear the interpretation of authorizing the Collector to promulgate such a law, they are void, as constituting an illegal delegation of legislative power.

The Attorney-General does not seek to sustain the conviction but joins with the counsel for the defense in asking for the discharge of the prisoner on the first ground stated by the defense, that the rule of the Collector cited was unauthorized and illegal, expressly passing over the other question of the delegation of legislative power.

After argument of the case, this court received a memorandum submitted by the Collector in his own behalf, which has been served on the counsel appearing in the case, with permission to reply.

By sections 1, 2, and 3 of Act No. 1136,,passed April 29, 1904, the Collector of Customs is authorized to license craft engaged in the lightering or other exclusively harbor business of the ports of the Islands, and, with certain exceptions, all vessels engaged in lightering are required to be so licensed. Sections 5 and 3 read as follows:

"SEC. 5. The Collector of Customs for the Philippine Islands is hereby authorized, empowered, and directed to promptly make and publish suitable rules and regulations to carry this law into effect and to regulate the business herein licensed.

"SEC. 8. Any person who shall violate the provisions of this Act, or of any rule or regulation made and issued by the Collector of Customs for the Philippine Islands, under and by authority of this Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not more than six

months, or by a fine of not more than one hundred dollars, United States currency, or by both such fine and imprisonment, at the discretion of the court: Provided, That violations of law may be punished either by the method prescribed in section seven hereof, or by that prescribed in this section, or by both."

Under this statute, which was not referred to on the argument, or in the original briefs, there is no difficulty in sustaining the regulation of the Collector as coming within the terms of section 5. Lighterage, mentioned in the Act, is the very business in which this vessel was engaged, and when heavily laden with hemp she was navigating the Pasig River below the Bridge of Spain, in the city of Manila. This spot is near the mouth of the river, the docks whereof are used for the purpose of taking on and discharging freight, and we entertain no doubt that it was in a right sense a part of the harbor, without having recourse to the definition of paragraph 8 of Customs Administrative Circular No. 136, which reads as follows:

"The limits of a harbor for the purpose of licensing vessels as herein prescribed (for the lighterage and harbor business) shall be considered to include its confluent navigable rivers and lakes, which are navigable during any season of the year."

The necessity of confiding to some local authority the framing, changing, and enforcing of harbor regulations is recognized throughout the world, as each region and each harbor requires peculiar rules more minute than could be enacted by the central lawmaking power, and which, when kept within their proper scope, are in their nature police regulations not involving an undue grant of legislative power.

The complaint in this instance was framed with reference, as its authority, to sections 311 and 319 [19 and 311] of Act No. 355, of the Philippine Customs Administrative Act, as amended by Acts Nos. 1235 and 1480. Under Act No. 1235, the Collector is not only empowered to make suitable regulations, but also to "fix penalties for violation thereof," not exceeding a fine of P500.

This provision of the statute does, indeed, present a serious question.

"One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws can not be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted can not relieve itself of the responsibility by choosing other agencies upon which the power shall be developed, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust" (Cooley's Constitutional Limitations, 6th ed., p. 137.)

This doctrine is based on the ethical principle that such a delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another. In the case of the United States vs. Breen (40 Fed. Rep., 402), an Act of Congress allowing the Secretary of War to make such rules and regulations as might be necessary to protect improvements of the Mississippi River, and providing that a violation thereof should constitute a misdemeanor, was sustained on the ground that the misdemeanor was declared not under the delegated power of the Secretary of War, but in the Act of Congress, itself. So also was a grant to him of power to prescribe rules for the use of canals. (U. S. vs. Ormsbee, 74 Fed. Rep., 207.) But a law authorizing him to require alterations of any bridge and to impose penalties for violations of his rules was held invalid, as vesting in him a power exclusively lodged in Congress. (U. S. vs. Rider, 50 Fed. Rep., 406.) The subject is considered and some cases reviewed by the Supreme Court of the United States, in re Kollock (165 U. S., 526), which upheld the law authorizing a commissioner of internal revenue to designate marks and stamps on oleomargarine packages, an improper use of which should thereafter constitute a crime or misdemeanor, the court saying (p. 533):

"The criminal offense is fully and completely defined by the Act and the designation by the Commissioner of the particular marks and brands to be used was a mere matter of detail. The regulation was in execution of, or supplementary to, but not in conflict with, the law itself. * * *."

In Massachusetts it has been decided that the legislature may delegate to the governor and council the power to make pilot regulations. (Martin vs. Witherspoon et al., 135 Mass., 175.)

In the case of The Board of Harbor Commissioners of the Port of Eureka vs. Excelsior Redwood Company (88 Cal., 491), it was ruled that harbor commissioners can not impose a penalty under statutes authorizing them to do so, the court saying:

"Conceding that the legislature could delegate to the plaintiff the authority to make rules and regulations with reference to the navigation of Humboldt Bay, the penalty for the violation of such rules and regulations is a matter purely in the hands of the legislature."

Having reached the conclusion that Act No. 1136 is valid, so far as sections 5 and 8 are concerned, and is sufficient to sustain this prosecution, it is unnecessary that we should pass on the questions discussed in the briefs as to the extent and validity of the other acts. The reference to them in the complaint is not material, as we have frequently held that where an offense is correctly described in the complaint an additional reference to a wrong statute is immaterial.

We are also of the opinion that none of the subsequent statutes cited operate to repeal the aforesaid section of Act No. 1136.

So much of the judgment of the Court of First Instance as convicts the defendant of a violation of Acts Nos. 355 and 1235 is hereby revoked, and he is hereby convicted of a misdemeanor and punished by a fine of 25 dollars, with costs of both instances. So ordered.

Arellano, C. J., Torres, Mapa, and Willard, JJ., concur.

[1] 4 Off. Gaz., 200.

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