

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RUFINO ROMERO, ACCUSED AND APPELLANT.***G.R. No. 46708. November 14, 1939*

Ponente: CONCEPCION, J.

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Rufino Romero appealed from the judgment of the Court of First Instance of Tarlac sentencing him to pay a fine of P10, with subsidiary imprisonment in case of insolvency, and the costs, for violation of section 45, in connection with section 47, of Act No. 2152.

The accused, who was in charge of a piece of land, had constructed thereon a ditch or canal through which passed the water which came from the lateral canals of the O'Donnell River Irrigation System and which irrigated said lot and No. 73 belonging to one Quiambao. In February, 1936, the accused closed the canal without previously obtaining the permission of the superintendent of the irrigation system, thereby impeding the irrigation of lot 73, to the prejudice of its owner and of the Government who thus lost the amount of P95 for irrigation taxes paid by the owner of said lot No. 73. He was charged with the violation of section 45 of Act No. 2152 and was sentenced to pay a fine by the decision which is before us on appeal.

The accused contends that the trial court erred in holding that section 45, in connection with section 47, of Act No. 2152 is applicable to the present case, and in not declaring the said Act, as to the aforesaid sections, unconstitutional in the event that it should be applicable to the present case. He argues that the closing of the farm ditch in question does not constitute a punishable violation of the law. He alleges that both the owner of the land as well as he did nothing more than to defend their lands, exercising thereby acts which constitute the attributes of ownership; that by the closing of the farm ditch, the accused did not interfere with the canals which form parts of the system, because the said farm ditch is not one of the principal, lateral or sublateral canals of the system, and that the government had not acquired an easement over the canal on the land which is under the charge of the accused.

The ditch or canal constructed by the appellant—which construction was possible only through the permission of the authorities of the Bureau of Public Works—formed a part of the O'Donnell River Irrigation System, so much so that the water of the said system passed through said ditch or canal and irrigated not only lot No. 74 under the charge of the herein appellant, but also lot No. 73 belonging to Quiambao. No person, except the employees and helpers of the Director of Public Works, has a right to interfere in the canals being worked by the Government. This is so provided in the rules adopted by the Director of Public Works to keep and conserve the O'Donnell River Irrigation System. Said rules are binding upon all interested parties. (*Santa Barbara Irrigation System vs. Delinquent Persons*, G. R. No. 26740, May 18, 1927.

The closing of the ditch by the accused, without the permission of the Director of Public Works, has obstructed the course of the water of the said irrigation system when it deprives lot No. 74 belonging to Quiambao of irrigation. Under the provision of section 45 of Act No. 2152, the accused is guilty of a misdemeanor. It cannot

be said that the Government is interfering with private ownership in this case, because, as is its duty, it only seeks to enforce the provisions of the Irrigation Act for the protection of public interest.

The appellant argues that this Act is unconstitutional. We do not see, in the light of the foregoing, any merits in this contention.

The appealed judgment is affirmed, and pursuant to the recommendation of the Solicitor-General, the accused is ordered to pay the amount of P95 by way of indemnity for damages suffered by the O'Donnell River Irrigation System, with the costs against him. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

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