

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. H. N. BULL, DEFENDANT AND APPELLANT.

G.R. No. 5270. January 15, 1910

Ponente: ELLIOTT, J.

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ELLIOTT, J.:

The appellant was convicted in the Court of First Instance of a violation of section 1 of Act No. 55, as amended by section 1 of Act No. 275, and from the judgment entered thereon appealed to this court, where under proper assignments of error he contends: (1) that the complaint does not state facts sufficient to confer jurisdiction upon the court; (2) that under the evidence the trial court was without jurisdiction to hear and determine the case; (3) that Act No. 55 as amended is in violation of certain provisions of the Constitution of the United States, and void as applied to the facts of this case; and (4) that the evidence is insufficient to support the conviction.

The information alleges:

"That on and for many months prior to the 2d day of December, 1908, the said H. N. Bull was then and there master of a steam sailing vessel known as the steamship Standard, which vessel was then and there engaged in carrying and transporting cattle, carabaos, and other animals from a foreign port, to wit, the port of Ampiang, Formosa, to the port and city of Manila, Philippine Islands; that the said accused H. N. Bull, while master of said vessel, as aforesaid, on or about the 2d day of December, 1908, did then and there willfully, unlawfully, and wrongfully carry, transport, and bring into the port and city of Manila, aboard said vessel, from the port of Ampiang, Formosa, six hundred and seventy-seven (677) head of cattle and carabaos, without providing suitable means for securing said animals while in transit, so as to avoid cruelty and unnecessary suffering to the said animals, in this, to wit, that the said H. N. Bull, master, as aforesaid, did then and there fail to provide stalls for said animals so in transit and suitable means for tying and securing said animals in a proper manner, and did then and there cause some of said animals to be tied by means of rings passed through their noses, and allow and permit others to be transported loose in the hold and on the deck of said vessel without being tied or secured in stalls, and all without bedding; that by reason of the aforesaid neglect and failure of the accused to provide suitable means for securing said animals while so in transit, the noses of some of said animals were cruelly torn, and many of said animals were tossed about upon the decks and hold of said vessel, and cruelly wounded, bruised, and killed.

"All contrary to the provisions of Acts No. 55 and No. 275 of the Philippine Commission."

Section 1 of Act No. 55, which went into effect January 1, 1901, provides that -

"The owners or masters of steam, sailing, or other vessels, carrying or transporting cattle, sheep, swine, or other animals, from one port in the Philippine Islands to another, or from any foreign port to any port within the Philippine Islands, shall carry with them, upon the vessels carrying such animals, sufficient forage and fresh water to provide for the suitable sustenance of such animals during the ordinary period occupied by the vessel in passage from the port of shipment to the port of debarkation, and shall cause such animals to be provided with, adequate forage and fresh water at least once in every twenty-four hours from the time that the animals are embarked to the time of their final debarkation."

By Act No. 275, enacted October 23, 1901, Act No. 55 was amended by adding to section 1 thereof the following:

"The owners or masters of steam, sailing, or other vessels, carrying or transporting cattle, sheep, swine, or other animals from one port in the Philippine Islands to another, or from any foreign port to any port within the Philippine Islands, shall provide suitable means for securing such animals while in transit so as to avoid all cruelty and unnecessary suffering to the animals, and suitable and proper facilities for loading and unloading cattle or other animals upon or from vessels upon which they are transported, without cruelty or unnecessary suffering. It is hereby made unlawful to load or unload cattle upon or from vessels by swinging them over the side by means of ropes or chains attached to the horns."

Section 3 of Act No. 55 provides that -

"Any owner or master of a vessel, or custodian of such animals, who knowingly and willfully fails to comply with the provisions of section one, shall, for every such failure, be liable to pay a penalty of not less than one hundred dollars nor more than five hundred dollars, United States money, for each offense. Prosecutions under this Act may be instituted in any Court of First Instance or any provost court organized in the province or port in which such animals are disembarked."

- It is contended that the information is insufficient because it does not state that the court was sitting at a port where the cattle were disembarked, or that the offense was committed on board a vessel registered and licensed under the laws of the Philippine Islands.

Act No. 55 confers jurisdiction over the offense created thereby on Courts of First Instance or any provost court organized in the province or port in which such animals are disembarked, and there is nothing inconsistent therewith in Act No. 136, which provides generally for the organization of the courts of the Philippine Islands. Act No. 400 merely extends the general jurisdiction of the courts over certain offenses committed on the high seas, or beyond the jurisdiction of any country, or within any of the waters of the Philippine Islands on board a ship or water craft of any kind registered or licensed in the Philippine Islands, in accordance with the laws thereof. (U. S. vs. Fowler, 1 Phil. Rep., 614.) This jurisdiction may be exercised by the Court of First Instance in any province into which such ship or water craft upon which the offense or crime was committed shall come after the commission thereof. Had this offense been committed upon a ship carrying a Philippine registry, there could have been no doubt of the jurisdiction of the court, because it is expressly conferred, and the Act is in accordance with well recognized and established public law. But the Standard was a Norwegian vessel, and it is conceded that it was not registered or licensed in the Philippine Islands under the laws thereof. We have then the question whether the court had jurisdiction over an offense of this character, committed on board a foreign ship by the master thereof, when the neglect and omission which constitutes the offense continued during the time the ship was within the territorial waters of the United States. No court of the Philippine Islands had jurisdiction over an offense or crime committed on the high seas or within the territorial waters of any other country, but when she came within 3 miles of a line drawn from the headlands which embrace the entrance to Manila Bay, she was within territorial waters, and a new set of principles became applicable. (Wheaton, Int. Law (Dana ed.), p. 255, note 105; Bonfils, Le Droit Int., sec. 490 et seq.; Latour, La Mer Ter., ch. 1.) The ship and her crew were then subject to the jurisdiction of the territorial sovereign subject to such limitations as have been conceded by that sovereignty through the proper political agency. This offense was committed within territorial waters. From the line which determines these waters the Standard must have traveled at least 25 miles before she came to anchor. During that part of her voyage the violation of the statute continued, and as far as the jurisdiction of the court is concerned, it is immaterial that the same conditions may have existed while the vessel was on the high seas. The offense, assuming that it originated at the port of departure in Formosa, was a continuing one, and every element necessary to constitute it existed during the voyage across the territorial waters. The completed forbidden act was done within American waters, and the court therefore had jurisdiction over the subject-matter of the offense and

the person of the offender.

The offense then was thus committed within the territorial jurisdiction of the court, but the objection to the jurisdiction raises the further question whether that jurisdiction is restricted by the fact of the nationality of the ship. Every state has complete control and jurisdiction over its territorial waters. According to strict legal right, even public vessels may not enter the ports of a friendly power without permission, but it is now conceded that in the absence of a prohibition such ports are considered as open to the public ships of all friendly powers. The exemption of such vessels from local jurisdiction while within such waters was not established until within comparatively recent times. In 1794, Attorney-General Bradford, and in 1796 Attorney-General Lee, rendered opinions to the effect that "the laws of nations invest the commander of a foreign ship of war with no exemption from the jurisdiction of the country into which he comes." (1, Op. U. S. Attys. Gen., 46, 87.) This theory was also supported by Lord Stowell in an opinion given by him to the British Government as late as 1820. In the leading case of *The Schooner Exchange vs. McFadden* (7 Cranch (U. S.), 116, 144), Chief Justice Marshall said that the implied license under which such vessels enter a friendly port may reasonably be construed as "containing exemption from jurisdiction of the sovereign within whose territory she claims the rights of hospitality." The principle was accepted by the Geneva Arbitration Tribunal, which announced that "the privilege of extraterritoriality accorded to vessels of war has been admitted in the law of nations; not as an absolute right, but solely as a proceeding founded on the principle of courtesy and mutual deference between nations." (2 Moore, Int. Law Dig., sees. 252 and 254; Hall, Int. Law, sec. 55; Taylor, Int. Law, sec. 256; Ortolan, Dip. de la Mer, 2. C. X.)

Such vessels are therefore permitted during times of peace to come and go freely. Local officials exercise but little control over their actions, and offenses committed by their crews are justiciable by their own officers acting under the laws to which they primarily owe allegiance. This limitation upon the general principle of territorial sovereignty is based entirely upon comity and convenience, and finds its justification in the fact that experience shows that such vessels are generally careful to respect local laws and regulations which are essential to the health, order, and well-being of the port. But comity and convenience does not require the extension of the same degree of exemption to merchant vessels. There are two well-defined theories as to the extent of the immunities ordinarily granted to them. According to the French theory and practice, matters happening on board a merchant ship which do not concern the tranquillity of the port or persons foreign to the crew, are justiciable only by the courts of the country to which the vessel belongs. The French courts therefore claim exclusive jurisdiction over crimes committed on board French merchant vessels in foreign ports by one member of the crew against another. (See Bonfils, *Le Droit Int.* (quat. ed.), sees. 624-628; Martens, *Le Droit Int.*, tome 2, pp. 338, 339; Ortolan, *Dip. de la Mer*, tit. 1, p. 292; Masse, *Droit Int.*, tome 2, p. 63.) Such jurisdiction has never been admitted or claimed by Great Britain as a right, although she has frequently conceded it by treaties. (Halleck, *Int. Law* (Baker's ed.), vol. 1, 231; *British Territorial Waters Act*, 1878.) Writers who consider extraterritoriality as a fact instead of a theory have sought to restrict local jurisdiction, but Hall, who is doubtless the leading English authority, says that -

"It is admitted by the most thoroughgoing asserters of the territoriality of merchant vessels that so soon as the latter enter the ports of a foreign state they become subject to the local jurisdiction on all points in which the interests of the country are touched." (Hall, *Int. Law*, p. 263.)

The United States has adhered consistently to the view that when a merchant vessel enters a foreign port it is subject to the jurisdiction of the local authorities, unless the local sovereignty has by act of acquiescence or through treaty arrangements consented to waive a portion of such jurisdiction. (15 Op. Attys. Gen., U. S., 178; 2 Moore, *Int. Law Dig.*, sec. 204; article by Dean Gregory, *Mich. Law Review*, Vol. II, No. 5.) Chief Justice Marshall, in the case of *The Exchange*, said that -

"When merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to

society and would subject the laws to continual infraction and the government to degradation if such individual merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country."

The Supreme Court of the United States has recently said that the merchant vessels of one country visiting the ports of another for the purpose of trade, subject themselves to the laws which govern the ports they visit, so long as they remain; and this as well in war as in peace, unless otherwise provided by treaty. (U. S. vs. Diekelman, 92 U. S., 520-525.)

Certain limitations upon the jurisdiction of the local courts are imposed by article 13 of the treaty of commerce and navigation between Sweden and Norway and the United States, of July 4, 1827, which concedes to the consuls, vice-consuls, or consular agents of each country "the right to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captains should disturb the order or tranquillity of the country." (Comp. of Treaties in Force, 1904, p. 754.) This exception applies to controversies between the members of the ship's company, and particularly to disputes regarding wages. (2 Moore, Int. Law Dig., sec. 206, p. 318; Tellefsen vs. Fee, 168 Mass., 188.) The order and tranquillity of the country are affected by many events which do not amount to a riot or general public disturbance. Thus an assault by one member of the crew upon another, committed upon the ship, of which the public may have no knowledge whatever, is not by this treaty withdrawn from the cognizance of the local authorities.

In 1876 the mates of the Swedish bark Frederike and Carolina engaged in a "quarrel" on board the vessel in the port of Galveston, Texas. They were prosecuted before a justice of the peace, but the United States district attorney was instructed by the Government to take the necessary steps to have the proceedings dismissed, and the aid of the governor of Texas was invoked with the view to "guard against a repetition of similar proceedings." (Mr. Fish, Secretary of State, to Mr. Grip, Swedish and Norwegian charge, May 16, 1876; Moore, Int. Law Dig.) It does not appear that this "quarrel" was of such a nature as to amount to a breach of the criminal laws of Texas, but when in 1879 the mate of the Norwegian bark Livingston was prosecuted in the courts of Philadelphia County for an assault and battery committed on board the ship while lying in the port of Philadelphia, it was held that there was nothing in the treaty which deprived the local courts of jurisdiction. (Commonwealth vs. Luckness, 14 Phila. (Pa.), 363.) Representations were made through diplomatic channels to the State Department, and on July 30, 1880, Mr. Evarts, Secretary of State, wrote to Count Lewenhaupt, the Swedish and Norwegian minister, as follows:

"I have the honor to state that I have given the matter careful consideration in connection with the views and suggestion of your note and the provisions of the thirteenth article of the treaty of 1827 between the United States and Sweden and Norway. The stipulations contained in the last clause of that article * * * are those under which it is contended by you that jurisdiction is conferred on the consular officers, not only in regard to such differences of a civil nature growing out of the contract of engagement of the seamen, but also as to disposing of controversies resulting from personal violence involving offenses for which the party may be held amenable under the local criminal law.

"This Government does not view the article in question as susceptible of such broad interpretation. The jurisdiction conferred upon the consuls is conceived to be limited to their right to sit as judges or arbitrators in such differences as may arise between captains and crews of the vessels, where such differences do not involve on the part of the 'captain or crew a disturbance of the order or tranquillity of the country. When, however, a complaint is made to a local magistrate, either by the captain or one or more of the crew of the vessel, involving the disturbance of the order or tranquillity of the country, it is competent for such magistrate to take

cognizance of the matter in furtherance of the local laws, and under such circumstances in the United States it becomes a public duty which the judge or magistrate is not at liberty voluntarily to forego. In all such cases it must necessarily be left to the local judicial authorities whether the procedure shall take place in the United States or in Sweden to determine if in fact there has been such disturbance of the local order and tranquillity, and if the complaint is supported by such proof as results in the conviction of the party accused, to visit upon the offenders such punishment as may be defined against the offense by the municipal law of the place." (Moore, Int. Law Dig., vol. 2, p. 315.)

The treaty does not therefore deprive the, local courts of jurisdiction over offenses committed on board a merchant vessel by one member of the crew against another which amount to a disturbance of the order or tranquillity of the country, and a fair and reasonable construction of the language requires us to hold that any violation of criminal laws disturbs the order or tranquillity of the country. The offense with which the appellant is charged had nothing to do with any difference between the captain and the crew. It was a violation by the master of the criminal law of the country into whose port he came. We thus find that neither by reason of the nationality of the vessel, the place of the commission of the offense, or the prohibitions of any treaty or general principle of public law, are the courts of the Philippine Islands deprived of jurisdiction over the offense charged in the information in this case.

It is further contended that the complaint is defective because it does not allege that the animals were disembarked at the port of Manila, an allegation which it is claimed is essential to the jurisdiction of the court sitting at that port. To hold with the appellant upon this issue would be to construe the language of the complaint very strictly against the Government. The disembarkation of the animals is not necessary in order to constitute the completed offense, and a reasonable construction of the language of the statute confers jurisdiction upon the court sitting at the port into which the animals are brought. They are then within the territorial jurisdiction of the court, and the mere fact of their disembarkation is immaterial so far as jurisdiction is concerned. This might be different if the disembarkation of the animals constituted a constitutional element in the offense, but it does not.

It is also contended that the information is insufficient because it fails to allege that the defendant knowingly and willfully failed to provide suitable means for securing said animals while in transit, so as to avoid cruelty and unnecessary suffering. The allegation of the complaint that the act was committed willfully includes the allegation that it was committed knowingly. As said in *Woodhouse vs. Rio Grande R. R. Company* (67 Texas, 416), "the word 'willfully' carries the idea, when used in connection with an act forbidden by law, that the act must be done knowingly or intentionally; that, with knowledge, the will consented to, designed, and directed the act." So in *Wong vs. City of Astoria* (13 Oregon, 538), it was said: "The first one is that the complaint did not show, in the words of the ordinance, that the appellant 'knowingly' did the act complained of. This point, I think, was fully answered by the respondent's counsel - that the words 'willfully' and 'knowingly' conveyed the same meaning. To 'willfully' do an act implies that it was done by design - done for a set purpose; and I think that it would necessarily follow that it was 'knowingly' done." To the same effect is *Johnson vs. The People* (94 Ill., 505), which seems to be on all fours with the present case.

The evidence shows not only that the defendant's acts were knowingly done, but his defense rests upon the assertion that "according to his experience, the system of carrying cattle loose upon the decks and in the hold is preferable and more secure to the life and comfort of the animals." It was conclusively proven that what was done was done knowingly and intentionally.

In charging an offense under section 6 of General Orders, No. 58, paragraph 3, it is only necessary to state the act or omission complained of as constituting a crime or public offense in ordinary and concise language, without repetition. It need not necessarily be in the words of the statute, but it must be in such form as to enable a person

of common understanding to know what is intended and the court to pronounce judgment according to right. A complaint which complies with this requirement is good. (U. S. vs. Sarabia, 4 Phil. Rep., 566.)

The Act, which is in the English language, imposes upon the master of a vessel the duty to "provide suitable means for securing such animals while in transit, so as to avoid all cruelty and unnecessary suffering to the animals." The allegation of the complaint as it reads in English is that the defendant willfully, unlawfully, and wrongfully carried the cattle "without providing suitable means for securing said animals while in transit, so as to avoid cruelty and unnecessary suffering to the said animals in this * * * that by reason of the aforesaid neglect and failure of the accused to provide suitable means for securing said animals while so in transit, the noses of some of said animals were cruelly torn, and many of said animals were tossed about upon the decks and hold of said vessel, and cruelly wounded, bruised, and killed."

The appellant contends that the language of the Spanish text of the information does not charge him with failure to provide "sufficient" and "adequate" means. The words used are "medios suficientes" and "medios adecuados." In view of the fact that the original complaint was prepared in English, and that the word "suitable" is translatable by the words "adecuado" "suficiente," and "conveniente," according to the context and circumstances, we determine this point against the appellant, particularly in view of the fact that the objection was not made in the court below, and that the evidence clearly shows a failure to provide "suitable means for the protection of the animals."

- The appellant's argument against the constitutionality of Act No. 55 and the amendment thereto seems to rest upon a fundamentally erroneous conception of the constitutional law of these Islands. The statute penalizes acts and omissions incidental to the transportation of live stock between foreign ports and ports of the Philippine Islands, and had a similar statute regulating commerce with its ports been enacted by the legislature of one of the States of the Union, it would doubtless have been in violation of Article I, section 3, of the Constitution of the United States. (Stubbs vs. People (Colo.), 11 L. R. A., N. S., 1071.)

But the Philippine Islands is not a State, and its relation to the United States is controlled by constitutional principles different from those which apply to States of the Union. The importance of the question thus presented requires a statement of the principles which govern those relations, and consideration of the nature and extent of the legislative power of the Philippine Commission and the Legislature of the Philippines. After much discussion and considerable diversity of opinion certain applicable constitutional doctrines are established.

The Constitution confers upon the United States the express power to make war and treaties, and it has the power possessed by all nations to acquire territory by conquest or treaty. Territory thus acquired belongs to the United States, and to guard against the possibility of the power of Congress to provide for its government being questioned, the framers of the Constitution provided in express terms that Congress should have the power "to dispose of and make all needful rules and regulations respecting territory and other property belonging to the United States." (Art. IV, sec. 3, par. 3.) Upon the acquisition of territory by the United States, and until it is formally incorporated into the Union, the duty of providing a government therefor devolves upon Congress. It may govern the territory by its direct acts, or it may create a local government, and delegate thereto the ordinary powers required for local government. (Binns vs. U. S., 194 U. S., 486.) This has been the usual procedure. Congress has provided such governments for territories which were within the Union, and for newly acquired territory not yet incorporated therein. It has been customary to organize a government with the ordinary separation of powers into executive, legislative, and judicial, and to prescribe in an organic act certain general conditions in accordance with which the local government should act. The organic act thus became the constitution of the government of the territory which had not been formally incorporated into the Union, and the validity of legislation enacted by the local legislature was determined by its conformity with the requirements of such

organic act. (National Bank vs. Yankton, 11 Otto (U. S.), 129.) To the legislative body of the local government Congress has delegated that portion of legislative power which in its wisdom it deemed necessary for the government of the territory, reserving, however, the right to annul the action of the local legislature and itself legislate directly for the territory. This power has been exercised during the entire period of the history of the United States. The right of Congress to delegate such legislative power can no longer be seriously questioned. (Dorr vs. U. S., 195 U. S., 138; U. S. vs. Heinszen, 206 U. S., 370, 385.)

The Constitution of the United States does not by its own force operate within such territory, although the liberality of Congress in legislating the Constitution into contiguous territory tended to create an impression upon the minds of many people that it went there by its own force. (Downes vs. Bidwell, 182 U. S., 289.) In legislating with reference to this territory, the power of Congress is limited only by those prohibitions of the Constitution which go to the very root of its power to act at all, irrespective of time or place. In all other respects it is plenary. (De Lima vs. Bidwell, 182 U. S., 1; Downes vs. Bidwell, 182 U. S., 244; Hawaii vs. Mankichi, 190 U. S., 197; Dorr vs. U. S., 195 U. S., 138; Rassmussen vs. U. S., 197 U. S., 516.)

This power has been exercised by Congress throughout the whole history of the United States, and legislation founded on the theory was enacted long prior to the acquisition of the present Insular possessions. Section 1891 of the Revised Statutes of 1878 provides that "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every Territory hereafter organized, as elsewhere within the United States," When Congress organized a civil government for the Philippines, it expressly provided that this section of the Revised Statutes should not apply to the Philippine Islands. (Sec. 1, Act of 1902.)

In providing for the government of the territory which was acquired by the United States as a result of the war with Spain, the executive and legislative authorities have consistently proceeded in conformity with the principles above stated. The city of Manila was surrendered to the United States on August 13, 1898, and the military commander was directed to hold the city, bay, and harbor, pending the conclusion of a peace which should determine the control, disposition, and government of the Islands. The duty then devolved upon the American authorities to preserve peace and protect persons and property within the occupied territory. Provision therefor was made by proper orders, and on August 26 General Merritt assumed the duties of military governor. The treaty of peace was signed December 10, 1898. On the 22d of December, 1898, the President announced that the destruction of the Spanish fleet and the surrender of the city had practically effected the conquest of the Philippine Islands and the suspension of the Spanish sovereignty therein, and that by the treaty of peace the future control, disposition, and government of the Islands had been ceded to the United States. During the period of strict military occupation, before the treaty of peace was ratified, and the interim thereafter, until Congress acted (Santiago vs. Noguera, 214 U. S., 260), the territory was governed under the military authority of the President as commander in chief. Long before Congress took any action, the President organized a civil government, which, however, had its legal justification, like the purely military government which it gradually superseded, in the war power. The military power of the President embraced legislative, executive, and judicial functions, all of which he might exercise personally, or through such military or civil agents as he chose to select. As stated by Secretary Root in his report for 1901 -

"The military power in exercise in a territory under military occupation includes executive, legislative, and judicial authority. It not infrequently happens that in a single order of a military commander can be found the exercise of all three of these different powers - the exercise of the legislative powers by provisions prescribing a rule of action; of judicial power by determinations of right; and of executive power by the enforcement of the rules prescribed and the rights determined."

President McKinley desired to transform military into civil government as rapidly as conditions would permit. After full investigation, the organization of civil government was initiated by the appointment of a commission to which civil authority was to be gradually transferred. On September 1, 1900, the authority to exercise, subject to the approval of the President, "that part of the military power of the President in the Philippine Islands which is legislative in its character" was transferred from the military government to the Commission, to be exercised under such rules and regulations as should be prescribed by the Secretary of War, until such time as complete civil government should be established, or Congress otherwise provided. The legislative power thus conferred upon the Commission was declared to include "the making of rules and orders having the effect of law for the raising of revenue by taxes, customs duties, and imposts; the appropriation and expenditure of public funds of the Islands; the establishment of an educational system throughout the Islands; the establishment of a system to secure an efficient civil service; the organization and establishment of courts; the organization and establishment of municipal and departmental governments, and all other matters of a civil nature which the military governor is now competent to provide by rules or orders of a legislative character." This grant of legislative power to the Commission was to be exercised in conformity with certain declared general principles, and subject to certain specific restrictions for the protection of individual rights. The Commission were to bear in mind that the government to be instituted was "not for our satisfaction or for the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands, and the measures adopted should be made to conform to their customs, their habits, and even their prejudices, to the fullest extent consistent with the accomplishment of the indispensable requisites of just and effective government." The specific restrictions upon legislative power were found in the declarations that "no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offense or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches and seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder or ex post facto law shall be passed; that no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances; that no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed."

To prevent any question as to the legality of these proceedings being raised, the Spooner amendment to the Army Appropriation Bill passed March 2, 1901, provided that "all military, civil, and judicial powers necessary to govern the Philippine Islands * * * shall until otherwise provided by Congress be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for the establishment of civil government, and for maintaining and protecting the inhabitants of said Islands in the free enjoyment of their liberty, property, and religion." Thereafter, on July 4, 1901, the office of Civil Governor was created, and the executive authority, which had been exercised previously by the military governor, was transferred to that official. The government thus created by virtue of the authority of the President as Commander in Chief of the Army and Navy continued to administer the affairs of the Islands under the direction of the President until by the Act of July 1, 1902, Congress assumed control of the situation by the enactment of a law which, in connection with the instructions of April 7, 1900, constitutes the organic law of the Philippine Islands.

The Act of July 1, 1902, made no substantial changes in the form of government which the President had erected.

Congress adopted the system which was in operation, and approved the action of the President in organizing the government. Substantially all the limitations which had been imposed on the legislative power by the President's instructions were included in the law, Congress thus extending to the Islands by legislative act not the Constitution, but all its provisions for the protection of the rights and privileges of individuals which were appropriate under the conditions. The action of the President in creating the Commission with designated powers of government, in creating the office of the Governor-General and Vice-Governor-General, and through the Commission establishing certain executive departments, was expressly approved and ratified. Subsequently the action of the President in imposing a tariff before and after the ratification of the treaty of peace was also ratified and approved by Congress. (Act of March 8, 1902; Act of July 1, 1902; *U. S. vs. Heinszen*, 206 U. S., 370; *Lincoln vs. U.S.*, 197 U.S., 419,) Until otherwise provided by law the Islands were to continue to be governed "as thereby and herein provided." In the future the enacting clause of all statutes should read "By authority of the United States" instead of "By the authority of the President." In the course of time the legislative authority of the Commission in all parts of the Islands not inhabited by Moros or non-Christian tribes was to be transferred to a legislature consisting of two houses - the Philippine Commission and the Philippine Assembly. The government of the Islands was thus assumed by Congress under its power to govern newly acquired territory not incorporated into the United States.

This Government of the Philippine Islands is not a State or a Territory, although its form and organization somewhat resembles that of both. It stands outside of the constitutional relation which unites the States and Territories into the Union. The authority for its creation and maintenance is derived from the Constitution of the United States, which, however, operates on the President and Congress, and not directly on the Philippine Government. It is the creation of the United States, acting through the President and Congress, both deriving power from the same source, but from different parts thereof. For its powers and the limitations thereon the Government of the Philippines looked to the orders of the President before Congress acted and the Acts of Congress after it assumed control. Its organic laws are derived from the formally and legally expressed will of the President and Congress, instead of the popular sovereign constituency which lies back of American constitutions. The power to legislate upon any subject relating to the Philippines is primarily in Congress, and when it exercises such power its act is from the viewpoint of the Philippines the legal equivalent of an amendment of a constitution in the United States.

Within the limits of its authority the Government of the Philippines is a complete governmental organism with executive, legislative, and judicial departments exercising the functions commonly assigned to such departments. The separation of powers is as complete as in most governments. In neither Federal nor State governments is this separation such as is implied in the abstract statement of the doctrine. For instance, in the Federal Government the Senate exercises executive powers, and the President to some extent controls legislation through the veto power. In a State the governor is not a member of the legislative body, but the veto power enables him to exercise much control over legislation. The Governor-General, the head of the executive department in the Philippine Government, is a member of the Philippine Commission, but as executive he has no veto power. The President and Congress framed, the government on the model with which Americans are familiar, and which has proven best adapted for the advancement of the public interests and the protection of individual rights and privileges.

In instituting this form of government the intention must have been to adopt the general constitutional doctrines which are inherent in the system. Hence, under it the Legislature must enact laws subject to the limitations of the organic laws, as Congress must act under the national Constitution, and the States under the national and state constitutions. The executive must execute such laws as are constitutionally enacted. The judiciary, as in all governments operating under written constitutions, must determine the validity of legislative enactments, as well as the legality of all private and official acts. In performing these functions it acts with the same independence as

the Federal and State judiciaries in the United States. Under no other constitutional theory could there be that government of laws and not of men which is essential for the protection of rights under a free and orderly government.

Such being the constitutional theory of the Government of the Philippine Islands, it is apparent that the courts must consider the question of the validity of an act of the Philippine Commission or the Philippine Legislature, as a State court considers an act of the State legislature. The Federal Government exercises such powers only as are expressly or impliedly granted to it by the Constitution of the United States, while the States exercise all powers which have not been granted to the central government. The former operates under grants, the latter subject to restrictions. The validity of an Act of Congress depends upon whether the Constitution of the United States contains a grant of express or implied authority to enact it. An act of a State legislature is valid unless the Federal or State constitution expressly or impliedly prohibits its enactment. An Act of the legislative authority of the Philippine Government which has not been expressly disapproved by Congress is valid unless its subject-matter has been covered by congressional legislation, or its enactment forbidden by some provision of the organic laws.

The legislative power of the Government of the Philippines is granted in general terms subject to specific limitations. The general grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated. It is true that specific authority is conferred upon the Philippine Government relative to certain subjects of legislation, and that Congress has itself legislated upon certain other subjects. These, however, should be viewed simply as enactments on matters wherein Congress was fully informed and ready to act, and not as implying any restriction upon the local legislative authority in other matters. (See Opinion of Atty. Gen. of U. S., April 16, 1908.)

The fact that Congress reserved the power to annul specific acts of legislation by the Government of the Philippines tends strongly to confirm the view that for purposes of construction the Government of the Philippines should be regarded as one of general instead of enumerated legislative powers. The situation was unusual. The new government was to operate far from the source of its authority. To relieve Congress from the necessity of legislating with reference to details, it was thought better to grant general legislative power to the new government, subject to broad and easily understood prohibitions, and reserve to Congress the power to annul its acts if they met with disapproval. It was therefore provided "that all laws passed by the Government of the Philippine Islands shall be reported to Congress, which hereby reserves the power and authority to annul the same." (Act of Congress, July 1, 1902, sec. 86.) This provision does not suspend the acts of the Legislature of the Philippines until approved by Congress, or when approved, expressly or by acquiescence, make them the laws of Congress. They are valid acts of the Government of the Philippine Islands until annulled. (*Miners Bank vs. Iowa*, 12 How. (U. S.), 1.)

In order to determine the validity of Act No. 55 we must then ascertain whether the Legislature has been expressly or by implication forbidden to enact it. Section 3, Article IV, of the Constitution of the United States operates only upon the States of the Union. It has no application to the Government of the Philippine Islands. The power to regulate foreign commerce is vested in Congress, and by virtue of its power to govern the territory belonging to the United States, it may regulate foreign commerce with such territory. It may do this directly, or indirectly through a legislative body created by it, to which its power in this respect is delegated. Congress has by direct legislation determined the duties which shall be paid upon goods imported into the Philippines, and it has expressly authorized the Government of the Philippines to provide for the needs of commerce by improving harbors and navigable waters. A few other specific provisions relating to foreign commerce may be found in the Acts of Congress, but its general regulation is left to the Government of the Philippines, subject to the reserved power of Congress to annul such legislation as does not meet with its approval. The express limitations upon the

power of the Commission and Legislature to legislate do not affect the authority with respect to the regulation of commerce with foreign countries. Act No. 55 was enacted before Congress took over the control of the Islands, and this act was amended by Act No. 275 after the Spooner amendment of March 2, 1901, was passed. The military government, and the civil government instituted by the President, had the power, whether it be called legislative or administrative, to regulate commerce between foreign nations and the ports of the territory. (*Cross vs. Harrison*, 16 How. (U. S.), 164, 190; *Hamilton vs. Dillin*, 21 Wall. (U. S.), 73, 87.) This Act has remained in force since its enactment without annulment or other action by Congress, and must be presumed to have met with its approval. We are therefore satisfied that the Commission had, and the Legislature now has, full constitutional power to enact laws for the regulation of commerce between foreign countries and the ports of the Philippine Islands, and that Act No. 55, as amended by Act No. 275, is valid.

- Whether a certain method of handling cattle is suitable within the meaning of the Act can not be left to the judgment of the master of the ship. It is a question which must be determined by the court from the evidence. On December 2, 1908, the defendant Bull brought into and disembarked in the port and city of Manila certain cattle, which came from the port of Ampiang, Formosa, without providing suitable means for securing said animals while in transit, so as to avoid cruelty and unnecessary suffering to said animals, contrary to the provisions of section 1 of Act No. 55, as amended by section 1 of Act No. 275. The trial court found the following facts, all of which are fully sustained by the evidence:

"That the defendant, H. N. Bull, as captain and master of the Norwegian steamer known as the *Standard*, for a period of six months or thereabouts prior to the 2d day of December, 1908, was engaged in the transportation of cattle and carabaos from Chinese and Japanese ports to and into the city of Manila, Philippine Islands.

"That on the 2d day of December, 1908, the defendant, as such master and captain as aforesaid, brought into the city of Manila, aboard said ship, a large number of cattle, which ship was anchored, under the directions of the said defendant, behind the breakwaters in front of the city of Manila, in Manila Bay, and within the jurisdiction of this court; and that fifteen of said cattle then and there had broken legs and three others of said cattle were dead, having broken legs; and also that said cattle were transported and carried upon said ship as aforesaid by the defendant, upon the deck and in the hold of said ship, without suitable precaution and care for the transportation of said animals, and to avoid danger and risk to their lives and security; and further that said cattle were so transported aboard said ship by the defendant and brought into the said bay, and into the city of Manila, without any provision being made whatever upon said decks of said ship and in the hold thereof to maintain said cattle in a suitable condition and position for such transportation.

"That a suitable and practicable manner in which to transport cattle aboard steamships coming into Manila Bay and unloading in the city of Manila is by way of individual stalls for such cattle, providing partitions between the cattle and supports at the front, sides, and rear thereof, and crosscleats upon the floor on which they stand and are transported, so that in case of storms, which are common in this community at sea, such cattle may be able to stand without slipping and pitching and falling, individually or collectively, and to avoid the production of panics and hazard to the animals on account of transportation in the manner in which said animals or cattle were transported in this case. Captain Summerville of the steamship *Taming*, a very intelligent and experienced seaman, has testified, as a witness in behalf of the Government, and stated positively that since the introduction in the ships with which he is acquainted of the stall system for the transportation of animals and cattle he has suffered no loss whatever during the last year. The defendant has testified, as a witness in his own behalf, that according to his experience the system of carrying cattle loose upon the decks and in the hold is preferable and more secure to the life and comfort of the animals, but this theory of the case is not maintainable, either by the proofs or common reason. It can not be urged with logic that, for instance, three hundred cattle without supports for the feet and without stalls or any other protection for them individually can be safely and suitably carried in times of storm upon the decks and in the holds of ships; such a theory is against the law of nature. One animal falling or pitching, if he is untied or unprotected, might produce a serious

panic and the wounding of half the animals upon the ship if transported in the manner found in this case."

The defendant was found guilty, and sentenced to pay a fine of two hundred and fifty pesos, with subsidiary imprisonment in case of insolvency, and to pay the costs. The sentence and judgment is affirmed. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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