

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. THE STANDARD OIL COMPANY OF NEW YORK, DEFENDANT AND APPELLANT.

G.R. No. 5876. September 01, 1911

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The Government of the Philippine Islands demands of The Standard Oil Company of New York the payment of P38,433.76, together with the interest thereon due from October 28, 1901, and the costs and expenses occasioned by this suit, by reason of the customs duties payable by the defendant company, the cause of the indebtedness being that contained in the following facts as set forth in the complaint:

On or about the 27th of July, 1901, the defendant company imported into the Philippine Islands 30,000 cases of refined petroleum which contained approximately 300,000 gallons. (Fact VI.) That same day, July 27, 1901, the defendant company presented to the Bureau of Customs of this city an affidavit setting forth that the said 30,000 cases of refined petroleum had been sold by the former to the commissary department of the United States Army in Manila, and that the said company retained no interest therein. (Fact VII.)

Through this affidavit and application for free entry made by the chief of the commissary department of the United States Army in Manila, the customs authorities of Manila issued a permit for the introduction into the Islands of the 30,000 cases of refined petroleum which were taken from the ship, then in the port of Manila, to the bonded warehouse of the defendant company where they were to remain in bond until they should be withdrawn and delivered to the commissary department of the United States Army in Manila, under the free entry privilege. (Facts VIII and IX.)

From August 7 to October 28, 1901, the defendant company removed from its warehouse the 30,000 cases there deposited, which it did with, the authorization of the customs authorities of the port of Manila, upon the express representation of the duly authorized agents of the defendant that the withdrawal of the said cases was for their delivery to the commissary department of the United States Army and for the exclusive use of the said Army, in conformity with the terms of the privilege of free entry granted thereto. (Facts X and XI.)

But, of the 30,000 cases, only 10,679 were actually delivered to the commissary department of the United States Army, and the remaining 19,321 cases, which contained 193,210 gallons of refined petroleum, equivalent to 608,321.685 kilograms, were, free of customs duties, sold to private parties; the Government of the Philippine Islands, as alleged by the plaintiff, being, by these deceitful and fraudulent means, defrauded of the tax or duty which the defendant company should have paid upon the said cases. (Facts XII and XIII.)

As prescribed by section 30 of the Provisional Customs Tariff, then in force in the Philippine Islands, the duty chargeable was 6.318 pesos Mexican currency for each 100 kilograms; so that, for the 608,321.685 kilograms, the defendant company was indebted in the sum of 38,433.76 pesos Mexican currency which, at the exchange of one dollar for each 2 pesos in Mexican currency, make exactly 38,433.76 pesos in Philippine currency. (Facts IV, V,

and XIV.)

To this complaint the defendant company interposed a demurrer upon the ground that sufficient facts were not alleged therein to constitute a cause of action, for the reason that, during the period of time when it is alleged in the complaint that the defendant company had imported petroleum into the Philippine Islands without paying the customs duties due thereon, there was no law whatever in existence that authorized the collection of duty on petroleum imported into the Philippine Islands from the United States.

Such demurrer was overruled, to which ruling an exception was taken by the defendant and, having been allowed a delay of five days within which to answer the complaint, the company waived such right and insisted upon the demurrer. The following stipulation was then agreed to by the plaintiff and the defendant:

"It is hereby stipulated by both parties, through their attorneys, that as, in harmony with section 101 of the Code of Civil Procedure the defendant's demurrer was overruled and it refused to answer the complaint, they submit the case to the decision of the court upon the allegations of the complaint which, for the purposes of the demurrer and pursuant to section 91 of the aforesaid code, have been admitted by the defendant; and that the latter shall stand by its demurrer and the exception taken by it before the court: for which reason there is no need of taking any testimony." (B. of E., p. 10.)

As a consequence, the Court of First Instance of the city of Manila rendered judgment and sentenced the defendant company to the payment of the amount demanded in the complaint with interest thereon at 6 per cent per annum from October 28, 1901, and to pay the costs.

The defendant appealed to this court, by bill of exceptions, and, after a hearing on the appeal, it is found that the appellant sets up the following assignments of error:

- The overruling of the demurrer;
- The judgment rendered against the defendant;
- The holding that the Act of Congress of June 30, 1906, was retroactive in effect and thus brought into force the ineffective military order which was invalid at the time of its issuance; and
- That this method of construing the said Act is contrary to the Amendments V and XIV of the Constitution of the United States.

Entering into details with reference to these assignments of error, the appellant puts the first proposition in the following terms:

Did there exist in the Philippines any law or regulation whatever legally in force and effect, under the provisions of which the payment of tariff or customs duties on the merchandise concerned, imported into this country from the United States on July 27, 1901, could be exacted? And then answers the same in the negative, grounded on four decisions of the Supreme Court of the United States: *Dooley vs. U. S.* (182 U. S., 222); *De Lima vs. Bidwell* (182 U. S., 1); *Fourteen Diamond Rings vs. U. S.* (183 U. S., 176); and *Warner, Barnes & Company vs. U. S.* (197 U. S., 419).

That there was such a law in force in the Philippines on the date mentioned, is a fact that can not be denied, nor is it denied by the appellant, who, on page 8 of his brief, says that "subsequent to November 10, 1898, the payment

of tariff duties at the custom house at Manila was required pursuant to the order issued by President McKinley that served as a rule of action until November 15, 1901, when the Act of the Philippine Commission went into effect." What is denied and co

With respect to this point under consideration, the legislative history of this period, August 13, 1898 to November 15, 1901, pertinent to the facts of the complaint, is the following: A customs service had been established in the Philippines by the Spanish Government. Upon the occupation of Manila by the American army on the 13th of August, 1898, the military government that was established found such service in operation and continued it, keeping the Manila custom-house open. On July 12, 1898, President McKinley, in his capacity of Commander-in-Chief of the Army, issued a military order in which he provided a schedule of tariff duties which were to be imposed and collected in all the posts and places occupied and held by troops of the United States. This military order was not, however, immediately applied to the custom-house at Manila, which continued to levy and collect duties in accordance with the Spanish tariff until November 10, 1898; but from this date it began to enter into full and absolute force and effect and continued to govern until November 15, 1901, when the tariff established by Act No. 230 of the Philippine Commission, became operative.

So that, from the time of the establishment of the military government of occupation, there was continuously, without any intermission, a tariff law under which customs duties were levied and collected in the Manila custom-house until the Philippine Commission, to which all the legislative, executive and judicial powers in the Islands were transferred, enacted on September 17, 1901, Act No. 230, made effective on November 15 of the same year—an Act which continued in force until Congress passed the Act of March 8, 1902, as to the entire force and effect of which, as well as to that of the previous Act of the Philippine Commission, not a word need be said, inasmuch as they are both entirely outside of the facts of the complaint.

The military order of July 12, 1898, under which the privilege of free entry was granted and the removal free of duty of the 30,000 cases of petroleum in question was effected, is the one that the appellant says "was still born," that is to say, that it never had nor could have any legal existence, and rests its assertion on the four decisions, above cited, of the Supreme Court of the United States.

It should be remembered that the exchange and ratification of the Treaty of Paris took place on April 11, 1899.

The cases of *De Lima vs. Bidwell*, and *Dooley vs. U. S.* were for exportation from Porto Rico to the United States and for importation from the United States into Porto Rico, respectively, subsequent to April 11, 1899. The duties were paid under protest; and suit being brought to obtain their refund, the Supreme Court of the United States decided that it was proper to return them, on the sole ground that the appellant company, on page 9 of its brief, argues in these terms: "because the powers of the President, as Commander-in-Chief of the Army and Navy, to impose customs duties in Porto Rico, ceased with the ratification of the Treaty of Paris, whereby Porto Rico was ceded to the United States," and "ceased to be a foreign country," as stated in the second of the said decisions, or in other terms, according to the first of them, "because Porto Rico had ceased to be a foreign country within the meaning of the customs laws, so that the Dingley Tariff, which treats of importations from foreign countries, could no longer be applicable in the matter of importations from Porto Rico."

In the case of the *Fourteen Diamond Rings* (183 U. S., 176) the Supreme Court referred entirely to the case of *De Lima vs. Bidwell* (182 U. S., 1), and said:

"No reason is perceived for any different ruling as to the Philippines. By the third article of the treaty Spain ceded to the United States the archipelago known as the Philippine Islands,' * * *. The treaty was ratified * * *. The Philippines thereby ceased, in the language of the treaty 'to be Spanish.' Ceasing to be Spanish, it ceased to be a foreign country."

And in the case of *Wainer, Barnes & Co. vs. IL S.* (197 U. S., 419), what that high tribunal said, as transcribed by the appellant company itself, is the following:

"It will be observed that the President's order relied upon was an order issued during the war with Spain, nine months before the treaty of peace was concluded. It was a measure taken with reference to that war alone, and not with reference to the insurrection of the native inhabitants of the Philippines, which did not arise until much later * * *. The natural view would be that the order expired by its own terms when the war with Spain was at an end. The order directs that upon the occupation of any forts and places in the Philippine Islands by the forces of the United States' the duties shall be levied and collected 'as a military contribution.' * * * It was a regulation for and during an existing war, referred to as definitely as if it had been named."

In none of these decisions is the military order of July 12, 1898, considered as "stillborn/" for it is not denied that it was effective up to the exchange or ratification of the treaty of peace of April 11, 1899, and only subsequent to this date is it considered that it became inoperative because the object for which it was created no longer existed. This is all that may be said.

Continuing the history of the last case, it must be kept in mind that if the Philippine Commission went on applying the customs tariff established by the President in that military order, it was because, on June 8, 1901, the Secretary of War had cabled to the Philippine Commission the following:

"The most obvious distinction between the status of Porto Rico and the Philippines, after the cession, indicated in the opinions of the court, is in the fact that Porto Rico was, at the time of cession, in full peaceable possession, while a state of war has continued in the Philippines. As the question of the President's power to impose duties in the Philippine Islands under the existing conditions of military occupation has not been decided by the court, the President has determined to continue to impose duties as heretofore." (See *Lincoln vs. U. S.*, 202 U. S., 484, 497.)

As may be seen, the matter treated in the paragraph above quoted is referred to by the words transcribed from the preceding decision (*Warner Barnes & Co. vs. U. S.*, 197 U. S., 419, 429) "the fact [it is furthermore stated in the said decision] that there was an insurrection of natives not recognized as belligerents in another part of the Islands, or even just outside the walls of the city of Manila, did not give the President power to impose duties on imports from a country no longer foreign." (Id.)

The Government of the United States asked for an annulment of this decision and a rehearing and invoked the ratification of the acts of the President, contained in the Act of Congress of July 1, 1902, called the "Philippine Bill;" but in a decision of May 28, 1906, that high tribunal re-affirmed its decision and held that the ratification of the executive acts under the President's order of July 12, 1898, contained in the Act of July 1, 1902, was confined to actions taken in accordance with its provisions; but that the exaction of duties on goods from the United States, after April 11, 1899, was not in accordance with those provisions and was not ratified by the said Act. (*Lincoln vs. U. S.*, and *Warner, Barnes & Co. vs. U. S.*, supra.)

Warner, Barnes & Co. succeeded in recovering the customs duties paid under protest on goods imported into the Islands from the United States. And if nothing further had been done in this matter, the present litigation would have had no reason for existence. The same ground upon which that commercial firm obtained the reimbursement of what it had unduly paid, could effectively be advanced by the present appellant as a bar against its being compelled to pay what would have been also unduly demanded.

But something further was done: there was subsequently an Act of Congress and a new decision by the same Supreme Court bearing on a case exactly identical with that of *Warner, Barnes & Co.*, which Act and decision make it appear that what is demanded of the appellant company is in no wise improper.

On June 30, 1906, Congress passed the following Act:

"That the tariff duties both import and export imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March eighth, nineteen hundred and two, at all ports and places in said Islands upon all goods, wares, and merchandise imported into said Islands from the United States, or from foreign countries, or exported from said islands, are hereby legalized and ratified, and the collection of all such duties prior to March eighth, nineteen hundred and two, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed." (34 Stat. at L. 636.)

The case which gave rise to the new decision of the Supreme Court was that of *United States vs. Heinszen & Co.* (206 U. S., 370), wherein demand was made for a like return of customs duties paid during the same period of time as those claimed by Warner, Barnes & Co., and when those demanded in this suit are understood to have been assessable.

Under this new phase of the matter, there was said what appears to be the last word in the same, with respect to the duties that were already levied and collected—that the order of the President of July 12, 1898, was not a law that had legal existence, in an absolute sense, inasmuch as the President had no power to create a law of this nature, such power being an exclusive one of the legislative branch, and that Congress neither issued such order nor authorized the President to do so.

And the Supreme Court said that it must be acknowledged that when the goods were introduced into the Philippine Islands there existed a customs tariff by virtue whereof duties were imposed in the name of the United States (that of the President's order) ; and although the duties fixed in this tariff were illegally exacted at that time, that is, after the exchange of the treaty of peace, such illegality was not the result of an inherent want of power in the United States to have authorized their imposition, but simply arose from the failure to delegate to the public official the authority essential to give immediate validity to his acts in enforcing the payment of the said duties; and since what is done by the agent without express power from the beginning on the part of the principal, may subsequently by the latter be confirmed by his ratifying his agent's action, hence Congress, by its said Act of June 30, 1906, confirmed, ratified, and gave such duties, levied and collected, legal subsistence in giving legal existence to the customs tariff, as though it had been passed by Congress itself, and the fallacy—the court adds—"becomes yet more obvious when it is observed that the contention can not even be formulated without misstating the nature of the Act of Congress; in other words, without treating that act as retrospective legislation enacting a tariff, when on its very face, the act is but an exercise of the conceded power dependent upon the law of agency to ratify an act done on behalf of the United States which the United States could have originally authorized." (*U. S. vs. Heinszen & Co.*, 206 U. S., 370.)

The foregoing is a complete statement of all the essential points of fact and of law which are strictly legal precedents with respect to the question now under discussion, to wit:

Should the appellant company pay the customs duties demanded of it at the present time?

The company maintains that it should not.

- Because the President's order, together with the tariff of July 12, 1898, under which such duties are demanded, is null and void and of no value and effect.

- Because the Act of Congress of June 30, 1906, did not confirm nor resuscitate that order, and was confined to approving and ratifying acts already consummated under the authority thereof, that is, to legalizing the collection

of the duties imposed in that tariff and already received; but it did not authorize duties to be collected on goods that had been imported or exported without the payment of any tax.

- Because it could not have been the intention of Congress to direct the levy of duties on goods imported under free entry in previous years, or during the period in question, as would be the case if the confirmation had a wider scope than that before indicated.

- Because, as in the case of an agent who, lacking the power to sell, purchase, and mortgage, substitutes another in his agency with such power to sell, purchase, and mortgage, if his substitute sells, purchases, and mortgages, and the principal, on being informed of what was thus illegally done by the substitute, chooses to ratify it, such ratification would not authorize the substitute again to sell, purchase, or mortgage; so, likewise, in the case of the President, the agent of the United States, who, lacking power to impose customs duties, delegated such power to his agents of the Government of these Islands, and subsequently the Congress of the United States chose to ratify the collections made by such agents of the Government of these Islands: this does not authorize such agents again to make similar collections.

- Because in the case of *United States vs. Heinszen & Co.* (206 U. S., 370) the conclusion arrived at from the decision of the Supreme Court appears to be that its sole basis is the power to confirm, since it completely repudiates the argument that the law established a tariff for the imposition and collection of duties on goods which, escaping the illegal exactions, could enter the country without the payment of duties, and holds that the right to confirm sprung immediately from, and as a result of, the payment of the money, that is, from the performance of the operation in behalf of the principal, the United States. (Brief, pp. 22 and 23.)

- Because there are two rules of construction: One is that every law must be understood and construed as future in its operation, unless its language be incompatible with such a conclusion; and the other, that the laws on taxation must be strictly interpreted against the Government, and in favor of the citizens or subjects, for no charges should be imposed, nor may their imposition be presumed, in excess of what the law expressly and clearly requires: hence, if the sense of the words employed in the Act of June 30, 1906, may be satisfied by restricting its scope to the duties already levied and collected, its effects must be limited to this point and not be allowed to embrace other cases. (Brief, p. 34.)

But, in the first place, it is not correct to affirm that the President's order was originally null and void. Its force and validity from November 10, 1898 to April 11, 1899 is beyond question. If, since this last date, it was unduly applied and, as a result thereof, there were illegal collections of the duties levied from then to November 15, 1901, when the Act of the Philippine Commission went into effect, and even also, it may be granted, until March 8, 1902, when the Act of Congress began to be operative, it was not, as the Supreme Court of the United States has already held, for an original want of power in the United States in whose name such duties were exacted, but was merely through an overreaching of power on the part of the agent—a defect which, if it really vitiated those collections, certainly was adoptable and was adopted by the general law of agency which authorizes the constituent or principal to ratify and make as of his own the act of the delegate or agent as if he himself, instead of the latter, had performed it, "as if such collection," the words of the Act, "had been specifically authorized and directed," by a prior Act of Congress.

In the second place: The intention and will of the legislator being so clear, so explicit, to approve, confirm, and ratify as by an act of his own prior to April 11, 1899, and even also to July 12, 1898 (the date of the order of the President), the acts of the latter and of the officials of the Government of these Islands, with respect to "the collection of all the said duties prior to March 8, 1902," and also with regard to "the import and export duties levied by the authorities of the United States or of the provisional military government of the same in the Philippine Islands prior to March 8, 1902" two subjects that are the purpose of the said Act, it being an axiom of law, that the ratification is equivalent to a mandate (*ratihabitio aequiparatur mandato*), the conclusion can not be avoided that, by the legislator's will, the tariff duties demandable during the period mentioned in the complaint, are so, not by a null and void order of the President, but by an Act of Congress. Such, and no other, is for the courts the status, of the established law in this matter, be whatever it may, in abstract law, the legality of the legislative act concerned, for there is no question pending before us with respect to its constitutionality, "We do not treat of the question in this brief," says the appellant, "as we do not consider it necessary to do so." (Brief, p. 15.)

In the third place: If, as the said Act provides, "the tariff duties both import and export imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March 8, 1902, * * * upon all goods, wares, and merchandise imported into said Islands from the United States * * * are hereby legalized and ratified * * *;" if the refined petroleum concerned in the complaint, was one of the articles imported into these Islands from the United States prior to March 8, 1902; if the import duty imposed upon it by section 30 of the tariff established by authority of the United States (the President), was 6.318 pesos Mexican currency for each 100 kilograms; if the total amount of this duty, aggregating, according to the facts set forth, the sum specified in the complaint, has been owing since October 28, 1901; if the action for its collection has arisen, and has not prescribed in accordance with section 206 of Act No. 355, by reason of the fraud committed and which has justly given ground for the levying of duty then why should the customs officials and the prosecuting officers of the Government remain inactive and not comply with their duty to exact, collect or demand the payment of such duties? And how can the courts, in view of an explicit law, appraised duties, an importation effected and an action arisen and not prescribed, fail to grant what is asked in a complaint based on such grounds?

In the fourth place: It is to beg the question to affirm that an attempt is now being made again to collect the duties on certain merchandise which already, several years ago, was entered free of duty because of the absolute lack of any law that may have validly imposed them. Neither was there a lack of such a law, nor did the goods in question enter absolutely free of duty, but their importation was merely allowed conditionally, upon the declaration that they fell under an exemption, in accordance with the free entry clause contained in the same law, the existence of which is now denied. Had not the privilege of exemption from duty granted by the law been utilized, the duties now demanded would have been collected in July, 1901, and the most that could have happened is that the appellant would have found itself in the same situation as that of Warner, Barnes & Co., and Heinszen & Co., sharing with both these firms the uncertain results that might be attained by assailing the order of July 12, 1898; but now the appellant's situation is parallel to that of those two firms only in respect to the fact of the importation of merchandise during the much discussed period, and differs therefrom in that the two companies above cited paid under protest, being resolved to maintain a theory of law, while the appellant was thoroughly convinced of the validity of the tariff and chose to avail itself of a privilege of exemption therein provided for, which, according to an admitted fact of the complaint, it abused by the commission of fraud.

This court would willingly overlook the fact enunciated in the last sentence just above expressed, and accept the third proposition stated by the appellant in its brief; but our desire is strongly opposed by section 91 of the Code of Civil Procedure and the agreement of the parties themselves above transcribed, according to which agreement "the allegations of the complaint have been admitted by the defendant," one of them, to wit, the 13th, being that:

"The said 19,321 cases of petroleum were withdrawn by the defendant company through deceit and fraud and with the definite purpose of defrauding the Government of the Philippine Islands of the customs duties owing to the same." (B. of E., p. 5,)

In the fifth place: The appellant's a pari argument is not, in this case, conclusive; it would be so, had an exact parity been established; for example, were it said that the constituent or principal had conferred power upon his agent in the United States, up to a certain period of time; that the agent had to confer the said power upon another in the Philippines for the purpose of the latter's exercising the same until the time fixed; that at a time considerably beyond that fixed, the substitute in the Philippines continued to exercise such power, let us say, for instance by collecting the rentals from several of the principal's tenants; that one of the latter alleged an exemption from payment, with very apparent proof that convinced the substitute who, therefore, desisted from requiring payment; that another tenant paid under protest and accordingly brought suit and obtained an acquittance from the payment, for the reason that it had been demanded of him without power, when the power had already lapsed; that thereupon the principal, having learned of this case, ratified the power and the acts of the substitute; that another of the tenants, upon whom a demand to pay was made in the same manner as upon the previous one, also alleged the lapse of the power and the illegality of the requirement of the substitute, but, as the principal had already declared his intention to ratify the acts and the power of the substitute, the tenant did not succeed in obtaining a release from the payment; that, upon the discovery by the substitute that the first of the said tenants had falsely made it appear that such tenant had a cause for exemption from payment, suit was brought against the latter. If such first tenant could be, through his fraud or without fraud whatever, in a better situation than the third one and should be released from the payment of the rental which was not collected from him for a false reason, then the argument would be, by parity, conclusive that neither may the appellant be required to make the payment which, in 1901, would have been demanded of it, had it not brought forward that free entry privilege which afterwards turned out to be a false reason for exemption.

Neither could this first tenant above referred to, nor can the appellant, in our opinion, say that they knew how to elude, in one way or another, at a given time, a payment which they deemed devoid of good grounds, as was stated with reference to the second tenant mentioned in the example, and that the judgment rendered with respect to the third tenant could not warrant that, at some subsequent time, action might again be taken in the matter of the payment previously eluded, on the grounds that the non-payment was an acquired right and the ratification made by the principal could not, without its being given a retroactive effect, have any bearing except on future acts and not on those already past.

The admission, free of duty, of the appellant's petroleum, could not constitute an acquired right, since this exception was not absolute, but conditional; the exemption was not the result of a right of its own, but simply one granted as a favor to a third party and of which, as the Government averred and the appellant admitted, it made an improper use; therefore this exemption can not be considered, not even by the lapse of time, as a mode of extinguishing an obligation.

The obligation to pay, therefore, still exists.

By reason of the foregoing, the judgment appealed from is affirmed, and the costs are assessed against the appellant. So ordered.

Torres, Mapa, Johnson, and Carson, JJ., concur.

DISSENTING

MORELAND, J.,

In this case the Insular Government seeks to recover from the defendant the sum of P38,433.76, together with interest due thereon from the 28th day of October, 1901.

It is alleged in the complaint in substance :

"1. That on June 26, 1901, the defendant company entered into a contract with the quartermaster's department of the United States Army at Manila whereby the former agreed to deliver to the latter at Manila 250,000 gallons of refined 'Comet' oil.

"2. That at the time of making said contract said oil was subject to the imposition of a customs duty of P6.318 Mexican currency per 100 kilos under section 30 of the United States Provisional Customs Tariff in force in the Philippine Islands.

"3. That at said time merchandise imported into the Philippine Islands for the use of the United States Army was exempt from customs duties.

"4. That on the 27th day of July, 1901, the defendant, for the purpose of complying with the terms of said contract with the quartermaster's department, imported into the Philippines from the United States 30,000 cases of refined petroleum containing approximately 300,000 gallons; that upon the arrival of the said shipment in the harbor of Manila, the defendant applied to the quartermaster's department and obtained a free entry certificate covering the entry of the said petroleum.

"5. That for the purpose of securing said free entry certificate, the defendant made an affidavit that the said 30,000 cases had been sold to the quartermaster's department.

"6. That subsequently, and by means of said affidavit and application, the defendant secured the admission of the 30,000 cases free of duty, to be delivered to the quarter-master's department whenever the latter desired to withdraw them from the bonded warehouse.

"7. That between the 7th day of August, 1901, and the 28th day of October, 1901, the defendant company removed from said bonded warehouse the 30,000 cases of oil; that permission to so remove was obtained from the customs authorities by reason of the certificate of free entry and the affidavit stating that the oil was intended for the quarter-master's department.

"8. That of the said 30,000 cases of petroleum the defendant delivered to the quartermaster's department 10,679 cases; and that the remaining 19,321 cases, containing approximately 193,210 gallons, equivalent to 608,321.685 kilos, were sold to private individuals within the Philippine Islands and were not used by the Army.

"9. That the said 19,321 cases were obtained by the defendant company by deceit and by misrepresentation practiced for the express purpose of defrauding the Government of the Philippine Islands of the customs duties thereon."

The defendant demurred to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action for the reason that, during the period of time in which it is alleged that the defendant imported refined petroleum into the Philippines from the United States without payment of customs duties thereon, there did not exist any law authorizing the levy or collection of customs duties on refined petroleum imported from the United States into the Philippine Islands.

The demurrer was overruled, defendant duly excepted, and declining to answer, having elected to stand on its demurrer, judgment was rendered against it for the amount claimed in the complaint. Defendant thereupon excepted to said judgment and filed notice of appeal.

In this court defendant makes the following assignment of errors:

"I. The court erred in overruling defendant's demurrer to the complaint.

"II. The court erred in rendering judgment against the defendant company.

"III. The court erred in holding that the Act of Congress of June 30, 1906, had retroactive effect, thus reviving a void and still born military order.

"IV. The construction given by the court to the Act of Congress of June 30, 1906, is in conflict with the fifth and fourteenth amendments to the Constitution of the United States."

The first proposition which I think must be laid down under the law is that, during the whole period covered by the allegations of the complaint, the Insular Government had no right to exact from defendant the payment of customs duties on the petroleum imported by it from the United States.

Prior to the Act of September 17, 1901, which went into effect November 15 of the same year, which was subsequent to the time of the importation complained of in this action, customs duties were exacted at the port of Manila under and by virtue of an order issued by President McKinley as Commander-in-Chief of the Army. This order is dated "Executive Mansion, July 12, 1898," and the material part thereof reads as follows:

"By virtue of the authority vested in me as Commander-in-Chief of the Army and Navy of the United States of America, I do hereby order and direct that upon the occupation and possession of any ports and places in the Philippine Islands by the forces of the United States, the following tariff of duties and taxes, to be levied and collected as a military contribution, and regulations for the administration thereof, shall take effect and be in force in the ports and places so occupied. Questions arising under said tariff and regulations shall be decided by the General in command of the United States forces in those Islands. Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder. Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War."

Manila was occupied by the military forces of the United States, August 13, 1898, and the next day the custom-house was opened. Customs duties were levied and collected, however, according to the old Spanish tariff up to the 10th Of November, 1898, said order of July 12, 1898, having been suspended during the time intervening between said dates. After the last mentioned date customs duties were collected by virtue of said order of President McKinley, which continued in force until November 15, 1901, when the Act of the Philippine Commission took effect. (See Act No. 230.)

In my judgment the question whether there was in the Philippines any law or regulation legally in force between the 28th of July, 1901, the date of the arrival of the petroleum, and the 28th of October, 1901, when the defendant, according to the complaint, finally disposed of all the oil in question, under which there could be levied and collected customs duties upon the said oil with or without the free entry certificate, has been fully resolved by the Supreme Court of the United States in several cases.

In the case of *Dooley vs. United States* (182 U. S., 222), it was held that the power of the President as Commander-in-Chief of the Army and Navy to impose customs duties on goods imported into Porto Rico ceased upon the ratification of the treaty of Paris by which Porto Rico was ceded to the United States. The court said:

"We have no doubt, however, that, from the necessities of the case, the right to administer the government of Porto Roco continued in the military commander after the ratification of the treaty and until further action by Congress. (*Cross vs. Harrison*, 16 How., 182, 14 L. Ed., 896 above cited.) At the same time, while the right to administer the government continued, the conclusion of the treaty of peace and the cession of the Island to the United States were not without their significance. By that act Porto Rico ceased to be a foreign country, and

the right to collect duties upon imports from that island ceased. We think the correlative right to exact duties upon importations from New York to Porto Rico also ceased. The spirit as well as the letter of the tariff laws admit of duties being levied by a military commander only upon importations from foreign countries; and, while his power is necessarily despotic, this must be understood rather in an administrative than in a legislative sense. While in legislating for a conquered country he may disregard the laws of that country, he is not wholly above the laws of his own. For instance, it is clear that while a military commander during the civil war was in the occupation of a southern port he could impose duties upon merchandise arriving from abroad, it would hardly be contended that he could also impose duties upon merchandise arriving from ports of his own country. His power to administer would be absolute, but his power to legislate would not be without certain restrictions, in other words, they would not extend beyond the necessities of the case."

In *De Lima vs. Bidwell* (182 U. S., 1) it was held that, by the treaty of Paris, Porto Rico ceased to be a foreign country within the meaning of the tariff laws, so that the Dingley Tariff, applicable solely to importations from foreign countries, could not be applied to shipments to the United States from that Island.

In *Fourteen Diamond Rings* (183 U. S., 176, 185), an attempt was made to distinguish between cases of shipments from the Philippine Islands and those from Porto Rico, the basis of the distinction being the existence of an insurrection in the former. This effort of the Government, however, was overruled by the Supreme Court and it was held that the principle governing the case of *De Lima vs. Bidwell* should be applied to importations from the Philippines. It was accordingly resolved that diamond rings imported into the United States from the Island of Luzon, in the Philippine Islands, after the ratification of the Treaty of Paris, were not imported from a foreign country. The learned Chief Justice wrote the opinion. In it is found the following:

"In *De Lima vs. Bidwell* the question was whether goods imported into New York from Porto Rico, after the cession, were subject to duties imposed by the Act of 1897 on 'articles imported from foreign countries/ and this court held that they were not. That Act regulated commerce with foreign nations, and Porto Rico had ceased to be within that category; nor could territory be foreign and domestic at the same time.

* * * * *

"No reason is perceived for any different ruling as to the Philippines. By the third article of the treaty Spain ceded to the United States 'the archipelago known as the Philippine Islands and the United States agreed to pay Spain the sum of \$20,000,000, within three months. The treaty was ratified; Congress appropriated the money; the ratification was proclaimed. The treaty-making power, the executive power, the legislative power, concurred in the completion of the transaction.

"The Philippines thereby ceased, in the language of the treaty 'to be Spanish.' Ceasing to be Spanish they ceased to be foreign country. They came under the complete and absolute sovereignty and dominion of the United States, and so became territory of the United States over which civil government could be established. The result was the same although there was no stipulation that the native inhabitants should be incorporated into the body politic, and none securing to them the right to choose their nationality. Their allegiance became due to the United States, and they became entitled to its protection."

In the case of *Warner, Barnes & Company vs. The United States* (197 U. S., 419, Lawyers' edition, book 49, p. 816), the action was to recover duties imposed and paid at Manila at various times between the 13th of December, 1898, and the 25th of October, 1901. These duties were exacted by certain military officers who had been designated by the President to act as collectors of customs in accordance with the order of July 12, 1898, above quoted. The Supreme Court among other things said:

"It will be observed that the President's order relied upon was an order issued during the war with Spain, nine months before the treaty of peace was made. It was a measure taken with reference to that war alone, and not with reference to the insurrection of the native inhabitants of the Philippines, which did not happen until much

later. Aguinaldo declared hostilities on February 4, 1899. The natural view would be that the order expired by its own terms when the war with Spain was at an end. The order directs that 'upon the occupation of any ports and places in the Philippine Islands by the forces of the United States' the duties shall be levied and collected 'as a military contribution.' Of course, this was not a power in blank for any military occasion which might turn up in the future. It was a regulation for and during an existing war, referred to as definitely as if it had been named. (See *Dooley vs. United States*, 182 U. S., 222, 234, 235, 45 L. ed., 1074, 1082, 1083; 21 Sup. Ct. Rep., 762.)

* * * * *

"Apart from the question of the duration of the President's order it plainly was an order intended to deal with imports from foreign countries only and Philippine ports not in the actual military control of the United States. But even had it been intended to have a wider scope, we do not perceive any ground on which it could have been extended to imports from the United States to Manila—a port which was continuously in the possession as well as ownership of the United States from the time of the treaty with Spain. Manila was not like Nashville during the Civil War, a part of a state recognized as belligerent and as having impressed a hostile status upon its entire territory. (*Hamilton vs. Dillin*, 21 Wall, 73, 94-96, 22 L. ed. 528, 533, 534.) The fact that there was an insurrection of natives not recognized as belligerents in another part of the island, or even just outside its walls, did not give the President power to impose duties on imports from a country no longer foreign." (Citing many authorities.)

The Attorney-General of the United States made a motion for a re-argument. It was granted for the purpose of hearing argument upon the question of the reach and effect of the alleged ratification of the collection of customs duties on merchandise shipped from the United States to the Philippine Islands by the Act of Congress approved July 1, 1902. The opinion of the court on the re-argument is reported in 202 U. S. Rep., at pages 484-500. The court in holding that the collection of the duties had not been ratified by Congress said, among other things:

"These are suits to recover duties exacted from plaintiffs in error and appellants upon merchandise shipped by them from New York to Manila, and landed at the latter port between April 11, 1899, the date when the ratifications of the treaty with Spain were exchanged and the treaty proclaimed [30 Stat. at L., 1754], and October 25, 1901. The duties were levied under an order of the President, dated July 12, 1898. The cases were argued in this court March 3, 1905, and the judgments reversed April 3, 1905. (197 U. S., 429, 49 L. ed., 819, 25 Sup. Ct. Rep., 455.)

"We ruled that the order of July 12, 1898, was a regulation for and during the then existing war with Spain, referred to as definitely as if it had been named, and that the right to levy duties thereunder on goods brought from the United States ceased on the exchange of ratifications. (*Dooley vs. United States*, 182 U. S., 222.)

"And that after title passed, April 11, 1899, there was nothing in the Philippine insurrection of sufficient gravity to give to the islands the character of foreign countries within the meaning of a tariff act. *Fourteen Diamond Rings vs. United States*, 183 U. S., 176, 46 L. ed. 138, 22 Sup. Ct. Rep., 59. As to the subsidiary point that whether the exaction of the duties was lawful or not, it had been ratified by the Act of July 1, 1902 (32 Stat. at L., 691, 692; chap. 1369, U. S. Comp. Stat. Supp., 1905, p. 391), section 2, we were of opinion that the ratification of 'the actions of the authorities taken in accordance with the provisions of said order and subsequent amendments' was confined to actions which were taken in accordance with the provisions of the order and amendments, which these exactions were not. May 29, 1905, we allowed petitions for rehearing to be filed addressed solely to the matter of ratification, and subsequently (November 13) a rehearing was granted 'as to the question whether Congress ratified the collection of the sums sought to be recovered in these suits.'

* * * * *

"Notwithstanding the able argument of the Attorney-General, we adhere to the conclusion previously

announced."

The foregoing authorities constrain me to the conclusion that there was in the Philippines at the time of the importation in question in this case no valid law authorizing the Collector of Customs or any other public official to impose customs duties on the merchandise imported, whether imported with or without a free entry certificate. In other words, the defendant unquestionably had the right to import into Manila at that time, free of duty, any amount of refined petroleum it desired to import, and the free entry certificate was legally superfluous.

The second proposition which in my judgment must be laid down as the law of the case is that the Act of Congress of June 30, 1906, was not intended to affect and did not affect cases like the one at bar.

That portion of said Act which is deemed to have had that result is as follows:

"That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March 8, 1902, at all ports and places in said Islands upon all goods, wares, and merchandise imported into said Islands from the United States or from foreign countries, or exported from said Islands, are hereby legalized and ratified, and the collection of all such duties prior to March 8, 1902, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed."

I believe that it is evident that the only purpose of this Act was to legalize the imposition and collection of duties actually imposed and collected during the period in question, and not to authorize the imposition and collection of new duties on goods imported or exported free of duty. There are many reasons which lead to this conclusion.

The Act in question makes no mention of the military order issued by the President under which said duties were exacted. It does not say that the dead order is revived and put in force retroactively. It merely confirms and ratifies all that had already been done in connection with the imposition and collection of customs duties. Although we know that the Act refers to duties which were imposed and collected in accordance with the military order already quoted, we do not, however, gather this information from the terms of the Act itself but from the history of the case; and as Congress did not intend to pass a retroactive law but, rather, one to ratify exactions and collections already made, the Act contained only what was absolutely necessary to accomplish that purpose.

If the Act in question had attempted to revive retro-actively the military order, Congress would have been met with the very serious question whether such an attempt would not have been in violation of the Constitution. I shall not, however, undertake to discuss this question. From the view I take of this case it is unnecessary to do so. I content myself with calling attention to the fact that it is to be presumed that Congress, in enacting the law in question, had in mind the provisions of the Constitution to which I have referred, and that, not desiring to pass any legislation of doubtful validity, it confined itself to confirming and ratifying what had already been done during the time that collections were made under the President's military order.

At the time the ratification Act was passed demands were being made upon the Government of the United States for the return of large sums of money for duties which had been illegally levied and collected under said military order, and the Government found that, unless a ratification act were passed, it would be obliged to refund millions which had been so collected at the port of Manila and elsewhere in the Philippine Islands. The decisions above cited made this obligation to refund very evident. Under those decisions it is undoubted that the Government would have been compelled to return many millions of dollars collected on importations into the Philippine Islands from the United States during the years intervening between the ratification of the treaty of Paris and the 15th of November, 1901, the date on which a valid tariff law duly authorized by Congress for the imposition of such customs duties became effective. These decisions swept the whole field, leaving no vantage ground from which the Government could resist the demands for the return of the sums thus illegally drawn from the

commerce of the two countries.

One of the most important of the rules for the interpretation of a statute is to ascertain what evil such statute was intended to remedy and the method adopted to remedy it. In this case it is clear that the evil which the Government sought to escape was the return of the vast sum of money which had been mistakenly collected by its officials. The real purpose of the Act, then, was not to collect duties which had not been levied or imposed at the time of the entry of the merchandise, or to impose new duties; but, rather, to avert the calamity of returning the enormous amounts already collected, something which would have embarrassed the public treasury and given cause for charging the government with maladministration in the customs affairs of the Philippine Islands. All that was necessary, then, in order to retain the money already collected, was a bare ratification.

If Congress had intended to levy duties on merchandise previously imported, it would have provided some method whereby such retroactive imposition and collection could have been made and enforced. It would not seem that Congress intended to impose duties on merchandise which had been imported free during the period in question, thereby compelling the Government, in the ports of the Philippine Islands, as well as in those of the United States, to institute judicial proceedings for the recovery of said duties on the innumerable shipments of goods, wares, and merchandise passing between the two countries. Such would be the result if the ratification had greater reach than I attribute to it.

It is apparent, therefore, that the intention of Congress was to maintain, rather than disturb, the statu quo; that is to say, to leave things as they were, ratifying what had already been done, instead of undoing what had previously been done, and thereby opening an endless series of litigation of which that at bar is one.

It should not be forgotten that this is a case in which acts performed by an agent in the name of his principal, without authority, are subsequently ratified. An agent, believing himself sufficiently authorized to delegate to another the power to perform certain acts, executes a power of attorney to a third person to buy, sell, mortgage, etc. property, thereby greatly exceeding his powers. Subsequently the principal, upon discovering what had been done in his name without authority, elects to ratify such acts, and accordingly executes a document in which he says: "I hereby ratify and confirm all things done by so and so (the third person) in my name, all acts performed by him to have the same effect as though previously authorized by me." In the case under consideration the order of July 12, 1898, was the power of attorney which the President executed to his representatives in the Philippines, and afterwards Congress, the principal, in order to avoid the disastrous results that would have followed, elected to ratify the acts of said representatives. It seems to me that no one will contend that the ratification in the example given had the effect of reviving the power of attorney in question as an authority for new transactions; the substitute could not pretend, by virtue of said ratification, to do or perform other acts of a similar nature.

The illustration given above may be carried still further by adding this feature: The principal in the meantime executes a new power of attorney without reference whatever to the former agent who undertook to represent him, covering the same subject and providing other means, methods and forms for carrying out his will. Who will contend that by virtue of the ratification referred to the old power of attorney was revived in the face of the new one executed by the same principal, making the old power effective as to new transactions? Would it not be said, rather, that the ratification in such case had the effect only of confirming acts which had already been performed, and that for all other purposes the first power of attorney had become null and void? The Government of the Philippine Islands, acting under the authority conferred upon it by Congress, the principal, passed a new law on November 15, 1901; that is to say, Congress executed a new power of attorney to its agents in the Philippines providing new conditions and establishing a new basis for the imposition of customs duties. But, notwithstanding this new power of attorney, an evil existed which threatened a serious shrinkage in the public funds. This condition was caused by the lack of authority on the part of the President to delegate to his agents in the

Philippines the power to collect customs duties upon goods and merchandise imported from the United States during the period intervening between the treaty of Paris and the passage of the new Tariff Act. It became necessary to meet the conditions thus created so as to prevent the Treasury, not of the Philippine Islands, but of the United States, from being depleted. Now, although it be admitted that the military order of the President, the former power of attorney, was valid, yet it was completely abrogated and superseded by the new law, power of attorney, covering the same subject. It would appear, therefore, that the ratification of the old law could have no other effect than to prevent suits against the Government for the return of the duties collected thereunder. The Government accordingly confined itself simply to ratifying the collection of the duties already turned into the treasury by its customs officials.

In my judgment, the Supreme Court of the United States has thus interpreted the ratification act in question in the case of *United States vs. Heinszen & Co.* (206 U. S., 370, 382). In that case Heinszen sued for the return of certain duties paid during the period covered by the complaint in this case, and the Supreme Court, speaking through Mr. Justice White, now Chief Justice, after first referring to the various decisions above mentioned, said:

"Applying the doctrine settled by this court in the cases to which we have referred, concerning the power to levy tariff duties under the authority of the President, on goods taken from the United States into Porto Rico and the Philippine Islands, or brought into the United States from either of such countries subsequent to the ratification of the treaty and prior to the levy by Congress of tariff duties, it is obvious that the court below correctly held that such tariff exactions were illegal. It follows, therefore, that the only question open for consideration is whether the court below erred in refusing to give effect to the Act of Congress of June 30, 1906, which ratified the collection of the duties levied under the order of the President.

"As the text of the Act of Congress is unambiguous and manifests as explicitly as can be done the purpose of Congress to ratify, the case comes to the simple question whether Congress possessed the power to ratify which it assumed to exercise. When the controversy is thus reduced to its ultimate issue we think the error committed by the court below, both in reason and authority, is readily demonstrable.

"That where an agent, without precedent authority, has exercised in the name of a principal a power which the principal had the capacity to bestow, the principal may ratify and affirm the unauthorized act, and thus retroactively give it validity when rights of third persons have not intervened, is so elementary as to need but a statement. That the power of ratification as to matters within their authority may be exercised by Congress, State governments or municipal corporations, is also elementary. We shall not stop to review the whole subject or cite the numerous cases contained in the books dealing with the matter, but content ourselves with referring to two cases as to the power of Congress, which are apposite and illustrative."

The court then proceeds to analyze certain decision relative of the power of Congress to ratify acts performed without authority and enters upon an examination of the case before it for the purpose of determining whether any exception existed which would prevent the application of the doctrine, arriving finally to a consideration of the reasons advanced by the adverse party in support of its contention that Congress had no power to make the ratification. Coming to the second reason thus advanced, it says :

"Second. As the duties collected were illegal, it is insisted that, for the purpose of testing the validity of the Act of Congress the fact of such collection must be put out of view, and the act ratifying the exaction must be treated as if it were solely an original exercise by Congress of the taxing power. This being done, it is said, reduces the case to the inquiry, had Congress power, years after goods which were entitled to free entry had been brought into the Philippine Islands, to retroactively impose tariff duties upon the consummated act of bringing the goods into that country? But the proposition begs the question for decision, by shutting out from view the potential fact that when the goods were brought into the Philippine Islands there was a tariff in existence under which duties were exacted in the name of the United States. Indeed, the contention goes further even than this, since it entirely disregards the important consideration that although the duties were

illegally exacted the illegality was not the result of an inherent want of power in the United States to have authorized the imposition of the duties but simply arose from the failure to delegate to the official the authority essential to give immediate validity to his conduct in enforcing the payment of the duties. And when these misconceptions are borne in mind it results that the unsoundness of the proposition relied upon is demonstrated by the application of the elementary principle of ratification to which we have previously referred. Moreover, the fallacy which the proposition involves becomes yet more obvious when it is observed that the contention can not even be formulated without misstating the nature of the Act of Congress; in other words, without treating that act as retrospective legislation enacting a tariff, when on its very face the act is but an exercise of the conceded power dependent upon the law of agency to ratify an act done on behalf of the United States which the United States could have originally authorized."

In further demonstration of the fact that the purpose of the Act was to ratify collections already made and not to revive the former military order so as to authorize new impositions thereunder, the court said:

"Third. It is urged that the ratifying statute can not be given effect without violating the fifth amendment to the Constitution, since to give efficacy to the Act would deprive the claimants of their property without due process of law, or would appropriate the same for public use without just compensation. This rests upon these two contentions: It is said that the money paid to discharge the illegally exacted duties after payment, as before, 'justly and equitably belonged' to the claimants, and that the title thereto continued in them as a vested right of property. It is consequently insisted that the right to recover the money could not be taken away without violating the fifth amendment, as stated. But here, again, the argument disregards the fact that when the duties were illegally exacted in the name of the United States Congress possessed the power to have authorized their imposition in the mode in which they were enforced, and hence from the very moment of collection a right in Congress to ratify the transaction, if it saw fit to do so, was engendered. In other words, as a necessary result of the power to ratify, it followed that the right to recover the duties in question was subject to the exercise by Congress of its undoubted power to ratify,"

It is thus clearly seen not only that the Act in question had no other purpose than to ratify the collections already made under the military order, but also that the only right of the Act to exist at all was the power of Congress to ratify said collections, since the court completely disapproves and overrules the contention that the Act retroactively provided a tariff for the imposition and collection of duties on goods which had escaped the illegal exaction and which were imported into the country without the payment of duty, holding that the right of Congress to ratify arose immediately upon and as a result of the payment of the money, that is to say, the performance of the acts in behalf of and in the name of the principal.

Reduced as it is to one of ratification, the question seems simple. If an agent, acting in the name of his principal, but without authority, should sell property, it is certain that, immediately upon such sale, that is to say, upon the complete performance of the act, the principal would have the right to disavow or ratify the act. But if, as in the case at bar, the agent did not actually sell the property or perform any other act unauthorized, the right never arose in favor of the principal, the United States or the Philippine Islands, either to ratify or repudiate the transaction. As nothing was done, there was nothing to repudiate or to ratify. As the goods imported by the defendant in this case escaped not only without the payment of duties illegally demanded, but also the imposition as well, there was nothing to ratify except perhaps the free entry. We thus arrive at the same conclusion as before, that is to say, that the purpose of the act under consideration was to maintain the statu quo and to avoid disturbing or undoing acts which had already been performed. In other words, the intention of Congress was to close the old books completely and with new and ample powers to its agent, open a new set for current operations only.

This interpretation of this Act of Congress appears to be the logical one. Any other interpretation, it seems to me, would give it a retroactive effect, something which the courts always endeavor to avoid. It is a well-known principle of statutory construction, of universal application, that, constitutional questions excepted, a law will not

be so construed as to affect transactions already consummated, unless it clearly appears that the legislature intended to the contrary. It is incumbent upon the party urging such interpretation to show some legal provision which so directs; for the declaration contained in article 3 of the Civil Code to the effect that "laws shall not have a retroactive effect unless otherwise provided therein" lays down an unquestioned principle of American as well as Spanish law.

Lewis Sutherland on Statutory Construction (vol. 2, p. 641), says:

"To avoid injustice and unconstitutionally, it is always laid down as a rule of construction that a statute is to be taken or construed as prospective, unless its language is inconsistent with that interpretation."

In support of this proposition many cases are cited. The same author in the same volume at page 1157, section 641, says:

"Retrospective statutes relate to past acts and transactions. Retroactive statutes are those which operate on such acts and transactions and change their legal character or effect. (This would be the effect of the act in question when applied to the case under consideration.) * * * As retrospective laws are generally unjust and in many cases oppressive, they are not looked upon with favor. Says the court in *Montpelier vs. Senter* (72 Vt., 112, 47 Atl., 392), 'Retrospective legislation is not favored, and is prohibited by the constitution of some of the states, as being highly injurious, oppressive and unjust; and nowhere will retrospective effect be given to a statute unless it appears that it was the intent of the legislature that it should have such effect.' And the supreme court of Minnesota says: 'Again, it is a well-settled rule that laws are not to be construed retrospectively, or to have a retrospective effect, unless it shall clearly appear that it was so intended by the enacting body, and unless such construction is absolutely necessary to give meaning to the language used.'" (Citing *Brown vs. Hughes*, 89 Minn., 150, 153, 94 N. W., 438.)

And again in section 642:

"The general rule is that statutes will be construed to operate prospectively only, unless an intent to the contrary clearly appears. It is said 'that a law will not be given a retrospective operation unless that intention has been manifested by the most clear and unequivocal expression/ (Citing *State vs. Kearney*, 49 Neb., 337, 339; 70 N. W., 255.) And in another case; 'The rule is that statutes are prospective and will not be construed to have retroactive operation unless the language employed in the enactment is so clear that it will admit of no other construction (Citing *Bauer Grocer Co. vs. Zelle*, 172 Ill., 407; 50 N. E. 238; *Clearly vs. Hooble*, 107 Ill., 97.) The rule is supported by numerous cases."

So for instance, although there is no vested right to an office which may not be disturbed by legislative enactment, yet, to deprive one of his rights thereto, the terms of the statute which is claimed to have such purpose must be clear. (*People vs. Green*, 58 N. Y., 295.)

Statutes which change the conditions under which public offices may be held (*Green vs. Asheville*, 114 N. C., 678; 19 S. E., 635; *Farrel vs. Pingree*, 5 Utah, 443; 16 Pac, 343), and those changing the emoluments of public officials are not applicable to those who at the time of their enactment were holding office.

So a statute requiring clerks of courts of record and sheriffs, at the end of their terms of office, to pay all costs and fees collected and remaining in their hands to the county treasurer with a statement containing the names of the persons entitled thereto and the amount of each was held not to be applicable to costs and fees collected before the Act went into effect. (*People vs. McClellan*, 137 Ill., 352; 27 N. E., 181.)

A general statute required that property be assessed in the name of the person who owned the same at noon the first Monday in March, An Act subsequent thereto was passed on March 14 providing for the taxation of property which was not previously taxable. It was held that the Act could not be given retroactive effect so as to authorize

the assessment of such property for the fiscal year beginning in 1899. (*Dodge vs. Nevada National Bank*, 109 Fed. Rep., 726; 48 C. C. A., 626.)

There is another rule of statutory construction which also seems applicable here. It is that statutes compelling a citizen to pay taxes must, in case of doubt, be construed most strongly against the government and in favor of the subjects or citizens, and that their provisions should not be extended by implication beyond the clear import of the language used. (*U. S. vs. Wigglesworth*, 2 Story (U. S.) 369; 28 Fed Cas., p. 595.)

In this case Mr. Justice Story said:

"In the first place, it is, as I conceive, the general rule in the interpretation of all statutes, levying taxes or duties upon subjects or citizens, not to extend their provision, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters, not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government, and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import, * * * Hence in the present case, if it be a matter of real doubt, whether the intention of the act of 1841 was to levy a permanent duty on indigo, that doubt will absolve the importer from paying the duty beyond the period, when it would otherwise be free."

(See also *Kuenzle & Streiff vs. Collector of Customs*, 18 Phil. Rep., 461.)

The Supreme Court of the United States took these rules into consideration in *De Lima vs. Bidwell* (182 U. S., 1-199), and, after determining that the exaction of customs duties at the port of New York on merchandise brought into the United States from Porto Rico was illegal, took up the question of ratification raised by the Government in that case and among other things said:

"It is insisted that an Act of Congress, passed on March 24, 1900 (31 Stat. at L., 51), applying for the benefit of Porto Rico the amount of the customs revenue received on importations by the United States from Porto Rico since the evacuation of Porto Rico by the Spanish forces, October 18, 1898, to January 1, 1900, together with any further customs revenues collected on importations from Porto Rico since January 1, 1900, or that shall hereafter be collected under existing law, is a recognition by Congress of the right to collect such duties as upon importations from a foreign country, and a recognition of the fact that Porto Rico continued to be a foreign country until Congress embraced it within the customs union. It 'may be seriously questioned whether this is anything more than a recognition of the fact that there were moneys in the treasury not subject to existing appropriation law. Perhaps we may go further, and say that, so far as these duties were paid voluntarily and without protest, the legality of the payment was intended to be recognized; * * *. In any event, it (the Act of March 24, 1900) should not be interpreted so as to make it retroactive.'" (Citing: *Kennett's Petition*, 24 N. H., 139; *Alter's Appeal*, 67 Pa., 341, 5 Am. Rep., 433; *Norman vs. Heist*, 5 Watts & S., 171, 40 Am. Dec, 493; *Donovan vs. Pitcher*, 53 Ala., 411, 25 Am. Rep., 634; *Palairt's Appeal*, 67 Pa., 479, 5 Am. Rep., 450; *State use of Methodist Episcopal Church vs. Warren*, 28 Md., 338.)

The same tribunal in the case of *United States vs. Heinszen & Co.*, above cited (206 U. S., at p. 389 et seq., L. ed., p. 1105), referring to what was held in the case of *De Lima*, said:

"Now, considering the language just quoted in connection with the doubt expressed as to the import of the alleged ratifying statute, it results that the reasoning employed stated two considerations: First, the want of power in Congress to ratify after suit brought; and the second, the duty of construing the statute relied upon so as not to produce ratification, in view of its ambiguity. As the question of construction was last stated and that question was declared to be 'in any event' decisive, we think the observations made concerning the want of power to ratify after suit brought must be regarded as not having been necessary to the decision rendered, and therefore must be treated as obiter. And this interpretation was, we think, applied in the case of *Lincoln vs. United States* and *Warner, Barnes & Co. vs. United States*, supra. In those cases, as we have said, one of the

defenses insisted upon by the government was a ratification alleged to have been operated by the Act of Congress of July 1, 1902, which was passed after the bringing of the actions to recover. It is patent on the face of the opinion announced on the original hearing that the decision was exclusively based upon the ground that the Act of Congress was so ambiguous concerning the ratification relied upon that it should not be implied that such ratification was contemplated. * * * In the opinion on the rehearing, while the court reiterated the view previously expressed, that the act could not be treated as ratifying the collection of the duties sought to be recovered because of its ambiguity * * *. This is so, since, in the course of the opinion, in answering the argument that the alleged ratifying statute would be meaningless unless it was held applicable to the particular duties in controversy, it was pointed out (202 U. S., p. 499, 50 L. ed., p. 1119; 26 Sup. Ct. Rep., p. 730) that there were duties which had been levied and collected other than those in controversy to which the act clearly applied, and 'that question [as to them] was put at rest by this ratification.' Further, in calling attention to the ambiguity in the ratifying statute relied upon and the resulting doubt whether it embraced all duties, it was pointed out that the fact that actions were pending at the time of the passage of the ratifying act lent cogency to the view that if Congress had intended by the ratification to affect them, it would have explicitly so declared. On this subject the court said (p. 498, L. ed., p. 1119; Sup. Ct. Rep., p. 730): 'This construction is favored by the consideration that the suits had been begun when the Act of July 1, 1902, was passed, and that, even if Congress could deprive plaintiffs of their vested rights in process of being asserted (*Hamilton vs. Dillin*, 21 Wall., 73, 22 L. ed., 528), still it is not to be presumed to do so on language which, literally taken, has a narrower sense.'

We have said before that it is not to be inferred that Congress intended to revive a dead order for the purpose of instituting new proceedings under it to recover duties never assessed or collected, unless there is a declaration in the statute to that effect in plain and unmistakable language. In the cases above referred to the Supreme Court undoubtedly had in mind the principle announced by Mr. Justice Story in *Society, etc., vs. Wheeler* (2 Call. (U. S.), 136) and approved in *Sturgis vs. Carter* (114 U. S., 519), in which the following rule was laid down:

"Upon principle, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective in its operation and opposed to the principles of jurisprudence which have always been universally recognized as sound."

We must not lose sight of the fact that the Supreme Court of the United States, in the case of *Heinszen*, distinguished between a law ratifying a past transaction and a retroactive statute creating a new obligation. In the case of *Heinszen* duties were actually imposed and collected, whereas, to render the defendant liable in the case at bar to pay the duties in question, it would be necessary to infuse new life into a dead order and, by reviving and transforming transactions already consummated, create a new obligation to pay duties on merchandise already imported free.

It seems to me sufficiently demonstrated that the ratification contained in the Act of June 30, 1906, does not cover the case at bar, and I do not, therefore, discuss, much less determine, the question of the constitutionality of an act which, going beyond the limits of a mere ratification of transactions already completely terminated, undertakes to create an obligation which was not legally or morally in existence at the time the transactions occurred. Nor, for the same reason, do I stop to discuss the effect on this case of section 206 of Act No. 355 of February 6, 1902, which, in so far as it has any bearing upon the question, reads as follows:

"Whenever any goods, wares and merchandise shall have entered and passed free of duty, * * * such entry and passage free of duty * * * after the expiration of one year from the time of entry, in the absence of fraud * * * will be final and conclusive upon all parties." as that Act was interpreted and applied in the case of *Beard, Collector of Customs, vs. Porter et al.* (124 U. S., 437-444). It now remains to inquire into the effect which the alleged fraud and misrepresentation imputed to the defendant may have upon the merits of this case.

As to this question, it would seem to me that, in a legal sense, no act can be fraudulent which does not violate a law or impair a right; and where the only effect of the act is to preserve and protect the rights of him who performs the act, it would seem to be clear that no legal fraud is committed.

It has been shown by the authorities already cited that the action of the customs officials at Manila on and between the dates in question in exacting duties on merchandise brought from the United States was unwarranted, was a usurpation of authority and was in violation of the plain rights of the defendant company. The defendant had the right to import its oil without any restriction or limitation whatever—a right which, according to elementary principles, it could enforce to the extent of using force, if necessary. (See paragraphs 4 and 11, article 8 of the Penal Code.) May it be said that one who misleads a trespasser to avoid his property being unjustly and wrong-fully seized is guilty of fraud? Would one be guilty of fraud who deceived a burglar to avoid being robbed? Would one be guilty of fraud who led a trespasser into error to prevent the latter from forcibly entering his premises? Is one to be charged with fraud who practices an evasion with the only object of preventing the destruction of a right which pertains to him? Does a subterfuge employed to deceive one who is about to commit a trespass upon admitted rights constitute the deceit which the law condemns? Would not this be rather the excusable deceit" which the law recognizes and approves? (See Escriche under the title of "Excusable Deceit,") It would seem unnecessary to say that if there was any deceit employed in this case it violated no legal right and injured no one.

In the case of *Ming vs. Woolfolk* (116 U. S., 599), the court said at page 602:

"So far, therefore, as the case made by the declaration is to be considered as an action to recover damages by a deceit practiced by the defendant, it amounts to this: That the defendant, by his false representations, induced the plaintiffs to do something which they would have done anyhow, and by which they sustained no loss, but on the contrary were greatly advantaged. 'The requisites to sustain an action for deceit/ says Baron Parke, in *Watson vs. Poulson* (15 Jurist, 1111), are 'the telling of an untruth, knowing it to be an untruth, with intent to induce a man to alter his condition, and his altering his condition in consequence, whereby he sustains damage/ (See also *Pasley vs. Freeman*, 3 T. R., 51; *Polhill vs. Walter*, 3 B. & Ad., 114; *Levy vs. Langridge*, 4 Mees. & Wels., 337; *Brown vs. Castles*, 11 Cush., 348; *Tryon vs. Whitmarsh*, 1 Met., 1.) Considered, therefore, as an action for a deceit it is plain that the case must fail; for, conceding the alleged representation to have been made by the defendant and to have been false, the plaintiffs were not induced thereby to change their condition, and, moreover, have suffered no damage. (See also *Marshall vs. Hubbard*, 117 U. S., 415.)"

In the case of *Deobold vs. Oppermann* (111 N. Y., 531), the court said at page 541:

"We are of the opinion that the maxim has no application to the case in hand, for the reason that no actionable fraud has been shown to have been committed upon the defendants in this transaction, nor has any loss occurred to them, in consequence of the surrender of the money referred to. It is probably true that the defendants would not have surrendered to the administratrix the funds of the estate in their possession, or have repaid to her the debt which they owed her, except for the decree produced for their inspection; but it is also very clear that they had no right to retain such funds by virtue of their contract with the administratrix, and there was no intention to commit a fraud upon them by the administratrix, in obtaining possession of property to which she was legally entitled. She was entitled to the repayment of her loan as a matter of course, for she held a promissory note therefor, payable on demand, and no possible defense could be made to its collection. Neither, as we have seen, could they have resisted a claim made by her, or others, for the reclamation of the money of the estate.

"They have done nothing, therefore, in consequence of the decree except what they were under legal obligation to do, and have, therefore, suffered no legal loss or injury from the transaction. The surrender of the property in question would not even have furnished a good consideration for a promise made by the administratrix. (*Vanderbilt vs. Schreyer*, 91 N. Y., 392.) It is of the very essence of an action of fraud or deceit, that the same

should be accompanied by damage, and neither *damnum absque injuria*, or *injuria absque damnum*, by themselves constitute a good cause of action. (*Hutchins vs. Hutchins*, 7 Hill, 104; *Michigan vs. Phoenix Bk.*, 33 N. Y., 9.) Neither can a party claim to have been defrauded who has been induced by artifice to do that which the law would have otherwise compelled him to perform. (*Thompson vs. Menck*, 2 Keyes, 82; *Story vs. Conger*, 36 N. Y., 673; *Randall vs. Hazelton*, 12 Allen, 412.)" (See also *Kountze vs. Kennedy*, 147 N. Y., 124.)

In the case of *Bartlett vs. Blaine* (83 111., 25) the court made use of the following language:

"Again, a mere fraudulent representation is not actionable per se. If a man utters slanderous words of his neighbor, the neighbor may have his action, though he be not damaged by the words spoken. If a man, upon a valuable consideration, promise to another that he will do any given thing, and fail to perform his promise, an action lies for the breach of promise, though no damage be done. Not so in an action for fraudulent representations. In such action, the plaintiff must not only show that the representations were made, and that they were false and fraudulent, but he must also show, affirmatively, that he has been injured thereby—that he is, in some way, in a worse condition than he would have been had the words been true.

"In this case, no such thing is shown. Plaintiffs have never been called upon to pay this note to Bullene, nor could they be. The existence of the note has in no way prevented them from getting promptly their 50 per cent upon their claim, according to the terms of their contract. It is said, however, that they were thereby induced to sign the composition articles, but there is no attempt to prove that they are in any worse condition than they would have been if they had not signed."

In the case of *Freeman vs. Venner* (120 Mass., 424), the court said:

"The further objection is, that treating this as an action to recover damages for an alleged fraud, the plaintiff shows no damages sustained at the time his action was commenced. It was then uncertain and contingent whether he would ever be called on to pay the note. It was payable to the plaintiff or order in two years, and was dated in July, 1873, shortly before its transfer by his indorsement to the defendant. The liability of the plaintiff depended on the failure of the makers to pay and the giving of due notice to him as indorser. No payment has in fact ever been made by him. If the holder receives his pay from the makers through the mortgage security or otherwise, the plaintiff will have suffered no actionable wrong. There will have been no concurrence of damage with fraud, within the rule on which such actions are founded. And as there has been no invasion of the plaintiff's right, no breach of promise, and no interference with his property, there can be no recovery of even nominal damages in this action. (*Pasley vs. Freeman*, 3 T. R. 51; 2 Smith Lead. Cas. (6th Am. ed.) 157, and notes.)"

In the case of *The Franklin Insurance Company of Indianapolis vs. Humphrey et al.* (65 Ind., 549), the court said:

"5. The appellant discusses the question of fraud set up in the second paragraph of answer, and insists, that although the facts offered to be proved might not amount to anything more than negligence which would not prevent Humphrey from recovering on the policy, yet, when a fraudulent purpose and corrupt design entered into his conduct by which he desired that the boat should be lost; 'in order that the insurance money might be recovered,' they amount to fraud which will prevent him from recovering on the policy; but if Humphrey, as we have held, had a right to keep his boat at the wharf in the city of Evansville, his motive, intention or purpose in doing so could not vitiate his acts. Fraud can not be predicated upon acts which the party charged has a right by law to do, nor upon the non-performance of acts which by law he is not bound to do, whatever may be his motive, design or purpose, either in doing or not doing the acts complained of."

In the case of *Britton vs. Supreme Council of the Royal Arcanum* (46 N. J. Eq., 102), the court said:

"Britton undoubtedly told a falsehood when he said Brennan was his cousin, but his falsehood did the defendant no harm. A falsehood or fraud that does not result in legal injury can neither be made the foundation of an action nor the ground of a defense."

In the case of *Atkinson vs. Sinnott* (67 Miss., 502), the court said:

"Complainant seeks to avoid the conveyance made by herself and husband on the ground that it was obtained by fraud. But the only fraud averred, or sought to be proved, is that while she and her husband intended only to make a written contract to convey, the defendant put the contract in the form of a deed, and knowing that the grantors therein did not then intend to execute a deed, fraudulently secured the instrument to be executed, representing it to be only a contract to make a future conveyance. There is no pretense that the instrument does not set out according to the understanding¹ of all parties the land to be conveyed, the price at which it was to be sold, and the time at which the purchase-money was to be paid. The sole complaint is, that by the fraud of the defendant, a contract to make a conveyance in the future, was made to take the form of a present conveyance. It would be a sufficient reply to this to say that, if a court of equity should afford to complainant all the relief it can. give in conformity with its inherent principles, she would be left precisely in the attitude in which she now stands. Certainly she must do equity as a condition of receiving relief, and, according to her own showing, she can only vacate the deed she assails upon condition of executing another of precisely the same tenor. It is incontrovertibly shown that, within the time named in the writing given by him, Atkinson tendered the purchase price, and has continuously kept his tender good and has paid the money into court with his answer, where it now is subject to complainant's acceptance. Under these circumstances there would be no shadow of right to relief on the ground now under consideration."

In the case of *Young vs. Bumpass et al.* (1 Freeman (Miss.), 241), the court said:

"If a man is procured to do an act, even through fraud, yet the act will be valid if it was such as the law would have compelled him to perform. Where fraud is charged, it must appear that the party was thereby misled to his prejudice or injury. Courts of equity do not relieve against deceptive acts, which are followed by no loss or injury (1 Story's Eq., 212)."

In the case of *Story vs. Conger* (36 N. Y., 673), the court said :

"Upon his own statement of the contract, the defendant has done no more than he was legally bound to do. If unjust or immoral means have been resorted to to induce him to perform that duty, there is no remedy. In its results the case stands where and as it ought to stand. (*Hutchins vs. Hutchins*, 7 Hill, 104; *Story's Eq. Jur.*, sec. 203; *Randall vs. Hazelton*, 12 Allen, 412, 415.)"

In the case of *Marsh vs. Cook* (32 N. J. Eq., 262), the court said:

"These are the leading and material facts of this part of the case. Do they show that the complainant has been inveigled into doing something whereby she has suffered injury or prejudice, which she did not mean to do, or which she had not agreed to do? The papers of themselves constitute a valid and valuable security, which the court can not destroy or impair except they are shown, by clear and convincing proof, to be the offspring of fraud. I think it is safe to say that it is impossible to frame a definition of fraud which will accurately define it in all of its multitudinous forms, but I think it may be said, with equal safety, that no deception or artifice will be considered an actionable fraud, so as to be the proper subject of judicial redress, which has not been a cause of injury or prejudice to the party seeking redress. A misrepresentation or concealment, which has not been the means of producing damage or injury, is not within the cognizance of human tribunals, for they do not sit for the purpose of enforcing moral obligations or correcting unconscientious acts which are followed by no loss or damage. (*Story's Eq. Jur.*, sees. 187, 203; *Perry on Trusts*, sec. 169.)

* * * * *

"But the decisive fact against the complainant's right to relief is, that she has suffered no wrong. She has done nothing more than good faith and a proper observance of her promises made it her duty to do. She was to have three years' further time within which to pay her debt, upon giving satisfactory security. She admits that was

the understanding. Her part of the bargain is secured to her; she has already enjoyed the advantage of the most of what she was to gain by the bargain; she has given the defendant nothing in return, but what she now asks to have taken from him. Her claim, viewed in its ultimate consequences, is most unrighteous. She does not allege that she agreed to give one security, and that another was fraudulently substituted for it, but simply that she promised to give a security without specifying what, and then she says she gave the one she now seeks to overthrow, without knowing precisely what it was, and she now insists that it should, for that reason, be nullified. Without suffering wrong herself, she asks the court to commit a wrong against the defendant, in order that she may escape the payment of an honest debt."

In the case of *Pheteplace vs. Eastman* (26 Iowa, 446), the court said:

"Was there, then, fraud (for certainly there was no coercion) or false representations, producing damage to plaintiff? If not, this judgment was wrong. And here a plain proposition is, that if plaintiff paid no more than his contract required of him for this land, he was not injured; there was no damage, and his action must fail. For it must be remembered that defendant is not seeking to recover the balance of the purchase money, but that plaintiff insists that defendant has so much money 'received to plaintiff's use,' under a promise (implied in law) to pay the same upon demand.

"If plaintiff was not injured, then it makes no difference that defendant had the deed in his possession after its delivery; that the deed was altered; nor that plaintiff had the impression that the vendor demanded the \$112. Nor, indeed, would any of the facts upon which the court below seems to have predicated the conclusion of fraud, be of any moment. For if plaintiff paid no more for the land than he was legally, or in equity bound to pay, he can not, because of defendant's supposed artifice or so-called fraud, demand the repayment. It would be a most idle task to compel defendant to hand over this money, if he, in an action tomorrow, could recover it as the balance due upon the land.

"As we understand this case, plaintiff agreed to pay for this land at the rate of eight dollars per acre—not \$640, but whatever would be the amount at this rate per acre. He got the land, 94 acres, and paid for it in precise accordance with his contract. Of this sum he says \$112 was obtained by fraud. Not in the original contract certainly; and, this being true, it is of no moment that the deed was changed. If it had remained as at the time of its execution, he would have been no less bound to pay this money. Nor is it of any moment that the deed was, or was not, recorded, nor whether the vendor did, or did not, demand the additional \$112. Aside from these considerations, and whether these representations were true or false, plaintiff, in paying the money but discharged his debt, and complied with his contract. And as plaintiff, before he can recover, must not only show fraud, but also that which resulted in his injury, it follows "that the court below erred in finding against defendant."

In the case of *Randall vs. Hazelton* (12 Allen, 412), the court said:

"The question raised by the demurrer is whether, upon the facts charged, the action can be maintained. It is an ancient and well established legal principle that fraud without damage or damage without fraud gives no cause of action; yet when the two do concur, there an action lieth. (3 Bulst., 95.) Actions like the one under consideration are all based upon this proposition; but it can not safely be applied as a test by which to determine whether the facts in any case constitute an actionable wrong, without keeping in mind the meaning which the law, by a series of judicial decisions, has attached to the terms used. It is well settled that every falsehood is not necessarily a legal fraud or false representation. It is said that a false representation is an affirmation of that which the party knows to be false or does not know to be true, to another's loss or his own gain. (Lobdell vs. Baker, 1 Met., 201.) So in reference to the term damage, the law is that it must be a loss brought upon the party complaining by a violation of some legal right, or it will be considered as merely *damnum absque injuria*. There is a large class of moral rights and duties, sometimes called imperfect rights and obligations, which the law does not attempt to enforce or protect. The refusal or discontinuance of a favor gives no cause of action" If one trusts to a mere gratuitous promise of favor from another and is disappointed,

the law will not protect him from the consequence of his undue confidence, nor encourage carelessness or want of prudence in affairs. Damages can never be recovered where they result from a lawful act of the defendant. The exercise of a right conferred by a valid contract, in the manner provided by its terms, can not be the ground of an action. The law will not inquire into the motives of the party exercising such right, however unfriendly and selfish. The trouble and expense and risk of loss ought to and must be presumed to have been contemplated when the contract was entered into. The foreclosure of a mortgage under a power of sale, for example, may be made at such time and under such circumstances as to cause great distress and sacrifice to the mortgagor; but, whatever the motive of the mortgagee, no remedy is afforded for his oppressive conduct, if the requirements of the contract have been fulfilled.

"But a more important consideration in this connection is, that the damage which this doctrine contemplates must not only be caused by the fraud and misconduct of the defendant, but it must be the direct and immediate consequence of the wrongful act. The law looks to the proximate and not the remote cause of the injury. It were infinite, says Lord Bacon, to consider the causes of causes and their impulsion of each other; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree. This is the only practical rule which, in view of the complication which surrounds this doctrine of causation, can be adopted in the administration of justice by human tribunals. Where the fraud and damage sustain this intimate relation of proximate cause and effect, and not otherwise, they are said to concur, in the sense of the proposition above stated.

"Applying the doctrine thus explained to the plaintiff's case as stated in the first count, we are of opinion that he sets forth no legal cause of action. The declaration shows no consideration for the alleged promise of the mortgagees to inform the plaintiff, in case the amount of the debt should be wanted by them. It was an agreement not legally binding upon them. . There was nothing in it to prevent them in law from proceeding to do all the acts in relation to advertising and selling the property which were done by the defendants; nor did it prevent them from assigning the mortgage. It can not be said to be an invasion of any legal right for the defendants to deprive the plaintiff even by falsehood of the benefit of this gratuitous undertaking. (*Hutchins vs. Hutchins*, 7 Hill, 104.) It is not alleged that the defendants knew of the alleged promise of the mortgagees. The false representation of a material existing fact for the purpose of procuring the transfer might have enabled the mortgagees to avoid it, or maintain an action for any loss sustained by them, but until avoided the title passed to the defendant. If the declaration had contained averments of a good legal consideration for the promise to give notice to the plaintiff, then it would seem to follow that the plaintiff's remedy would be ample against the mortgagees for all loss suffered by him by reason of the breach of their agreement, leaving them to whatever remedy they might have against the defendants for the fraud practiced by them. And this fact is said by Morton, J., in *Lamb vs. Stone* (11 Pick., 532), which was a case like this, to be good ground for refusing relief; for if the plaintiff 'may have redress by any of the forms of actions now known and practiced, it would be unwise and unsafe to sanction an untried one, the practical operation of which can not be fully foreseen.'

"But the more important fact is, that this specific act of obtaining the assignment in the manner stated in itself produced no direct and immediate damage to the plaintiff. The damage resulted solely from the foreclosure and forced sale of the premises, and would have been no more and no less if the mortgage had not been assigned, and the mortgagees had pursued precisely the course charged upon the defendants in regard to the sale. It was undoubtedly a necessary step in order that the defendants might practice the alleged oppression; but it was not the immediate cause of the injury. The substantial, efficient and immediate cause of the loss to the plaintiff was the foreclosure and sale. And we are not permitted to go behind and inquire into the antecedent causes, near or remote. (*Marble vs. Worcester*, 4 Gray, 395; *Tisdale vs. Norton*, 8 Met., 388.) We lay out of the case, therefore, that part of it which rests upon the false representations made to procure the transfer of the mortgage.

"The cases cited by the plaintiff we think ought not to control us in this result. In *Benton vs. Pratt* (2 Wend., 385), the court says: 'Here is the assertion of an unqualified falsehood with a fraudulent intent as to a present or existing fact, and a direct, positive and material injury resulting therefrom to the plaintiff/ In the American note

to *Pasley vs. Freeman* (2 Smith's Lead. Cas., 153), this case, it is said, certainly goes very far; but whether open to criticism or not in its main doctrine, it differs in the material point above indicated from the present case. So in *Green vs. Button* (Tyrwh. & Grang., 118), it was held that the damage to the plaintiff by delaying him in his work and injuring his credit directly resulted from the defendant's act. In the *Tun bridge Wells Dippers'* case (2 Wils., 414), while the court remarked that there was a real damage in depriving the plaintiff of some gratuity, they also say in the same sentence that the injury was by disturbing the dippers in the exercise of their right or employment, which it seems by some private statute they were entitled to."

Even under the authorities which hold that the invasion of a legal right is actionable even though no actual damage results (*Webb vs. Portland Mfg. Co.*, 3 Sumn., 189), still the case of the government would not be improved. The fact still remains that no legal right of the government was invaded by the defendant. The defendant presents both defenses. First, that there was no invasion of a legal right; and second, that there was no damage.

The Government's contention in this case may be reduced to this: A judge of whatever category, under a mistaken conception of the powers of his office, undertakes to impose fines on all persons arriving at Manila from Hongkong; and accordingly orders the bailiff of the court to watch at the wharf and arrest and bring before him all persons coming from said port. The judge succeeds in imposing a number of fines; but some of the persons escaped the fines either by landing at night or deceiving the court or the bailiff by asserting that they came from Singapore and not from Hongkong. The illegal conduct of the judge finally comes to the knowledge of the Philippine Legislature, and the latter, believing that of two evils the lesser would be the ratification of the acts of the judge, passes an act providing that all fines thus imposed are legalized and their collection ratified with the same force and effect as if they had been previously authorized by the Legislature under a law enacted for that purpose. Can it be successfully maintained that those who escaped or evaded the fines were guilty of fraud and are, therefore, by virtue of the ratifying statute, still subject to be prosecuted and fined? Can it be said that, notwithstanding the fact that they violated no law in coming to Manila from Hongkong, the deceit practiced on the court brought them, nevertheless, within the provisions of the act ratifying and legalizing the acts of the judge? Or would it be more just and reasonable to say that the only purpose of the ratifying statute was to purge the proceedings from a fatal defect and not to authorize retroactively the imposition of new fines?

While I am alone in this dissent, I have the satisfaction of knowing that, while this cause was under discussion by the court in consultation, Judge Trent, now on vacation, expressed views similar to my own.

For these reasons I think the demurrer should have been sustained.

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