

FRANCISCO GONZALEZ Y SALAZAR, PLAINTIFF, VS. THE BOARD OF PHARMACY, CREATED BY ACT NO. 597, AND THE SECRETARY-TREASURER OF SAID BOARD, DEFENDANTS.

G.R. No. 7262. October 21, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action having for its purpose the issuance of a writ of mandamus directed to the Board of Pharmacy of the Philippine Islands requiring it to issue to the plaintiff such certificate or license as shall legally authorize him to practice the profession of pharmacy in the Philippine Islands.

The question before us arises on the interposition of a demurrer to the complaint.

It is alleged in the application for the mandamus that the plaintiff is a resident of the Philippine Islands and that; prior to the ratification of the Treaty of Paris he was and now is an alumnus of the College of Pharmacy of Spain, having pursued and successfully passed all of the studies prescribed by such college and having ail of the qualifications required of pharmacists in the Philippine Islands; that from 1887 to 1895 he was duly registered and licensed to practice his profession in the Province of Antique, Panay, Philippine Islands; that during said time he did so practice his profession in said place, being the proprietor of a drug store which he himself conducted; that such license has never been revoked or cancelled; that during the Spanish regime pharmacists, like the plaintiff, graduates of the College of Pharmacy who had pursued the studies required for such graduation, who possessed the qualifications necessary for the exercise of that profession, and who were empowered by competent authority to practice, had the same professional consideration, the same rights and obligations, as graduates in pharmacy of the University of Santo Tomas of Manila, and their certificates and licenses had the same force and effect as those issued from said college; that prior to the commencement of the action the plaintiff had demanded in due form of the Board of Pharmacy of the Philippine Islands the issuance to him of a license and certificate of registry as a practicing pharmacist in pursuance of section 9 of Act No. 597 of the Philippine Commission; that said Board had refused to issue such license or certificate, alleging as a reason therefor that the plaintiff had not registered as required by section 11 of said law and did not possess the qualifications prescribed by the statute.

The complaint further alleges that said Board in refusing to issue to the plaintiff a license or certificate of registry as a pharmacist has failed to fulfill a clear legal duty, expressly laid upon it by the clear terms of the law> thereby depriving the plaintiff of the right to practice his legitimate profession and illegally excluding him from hid personal and professional rights to his great damage and injury.

The plaintiff further alleges, by way of excusing himself for his failure to register within the 120 days after the promulgation of said Act No. 597, as provided by section 11 thereof, that at the time said law took effect and during the succeeding 120 days thereafter, the plaintiff was in the interior of the Island of Negros, detained there by reasons over which he had no control, and was not informed and did not know of the requirements laid down by said section 11 of Act No. 597; that as soon as he became aware thereof he presented to the Governor-General

of the Philippine Islands a petition praying that he be permitted to register as a pharmacist under said section, although the time prescribed by said section had expired; that said petition was accompanied by a certificate signed by various pharmacists of Panay and Negros, stating that he was a licensed pharmacist and that, by reason of having been in the interior of the Island of Negros during the 120 days next succeeding the passage of said Act, he was unable to conform with the requirements thereof; that in spite of all his efforts he has been unable up to the present time to secure his registration as a licensed pharmacist.

Act No. 597 of the Philippine Commission is entitled "An Act regulating the practice of pharmacy in the Philippine Islands."

Section 3 of that Act reads in part as follows:

"The Board shall issue four forms of certificates of registration, as follows:

(a) A certificate as registered pharmacist to any person of twenty-one or more years of age, of good habits and moral character, holding a degree or diploma as doctor or licentiate from a reputable and well-known school, who has had at least four years of practical experience in some place where drugs, medicines, and poisons were dispensed and sold at retail, and the prescriptions of physicians compounded, and who has been examined and favorably passed upon by the Board, which certificate shall be signed by a majority of the members of the Board.

" (b) A certificate as registered pharmacist of the second class (*practicante de farmacia*) to any person twenty-one or more years of age, of good habits and moral character, who has had at least three years of practical experience in some place where drugs, medicines, and poisons were dispensed and sold at retail, and where physicians' prescriptions were compounded, and who has been examined and favorably passed upon by the Board, which certificate shall be signed by a majority of the members of the Board.

"(c) A certificate as apprentice in pharmacy to any person of good habits and moral character reported by a registered pharmacist, or registered pharmacist of the second class (*practicante de farmacia*), as having been taken into his employ as a student of pharmacy or an apprentice for the purpose of becoming a pharmacist.

"(d) A certificate as Chinese druggist to any person twenty-one or more years of age and of good habits and moral character who shall submit to the Board of Pharmaceutical Examiners a certificate from the Chinese consul at Manila that he is competent and qualified to conduct a Chinese drug store in accordance with the laws and customs of the Chinese Empire, together with such other evidence as to his fitness to conduct such a store as the Board may require."

Section 7 of said Act reads:

"Sixty days after the first meeting of the Board of Pharmaceutical Examiners for the Philippine Islands it shall be unlawful for any person to practice pharmacy in any of its branches in the Philippine Islands without a certificate of registration from the Board of Pharmaceutical Examiners."

Section 9 of said Act is as follows:

"Any person who, prior to the ratification of the Treaty of Paris, had received the degree of licentiate in pharmacy from the University of Santo Tomas, in the city of Manila, and who shall make application to the Board of Pharmaceutical Examiners, shall be granted a certificate of registration as pharmacist by the Board without further examination on payment of the required fee for registration."

Sections 10 and 11 are as follows:

"Sec. 10. Any person who, prior to the ratification of the Treaty of Paris, had received the title of '*practicante de farmacia*' from the University of Santo Tomas, of the city of Manila, and who shall make application to the

Board of Pharmaceutical Examiners, shall be granted a certificate as second-class pharmacist (practicante de farmacia) by the Board, without further examination, on payment of the required fee for registration.

"Sec. 11. Every person engaged in the practice of pharmacy in the Philippine Islands at the time of the passage of this Act shall, within one hundred and twenty days from the date of its passage, register with the secretary-treasurer of the Board and pay the usual fee of registration, and the secretary-treasurer shall issue the usual certificate of registration to each person so registering. Any person failing to comply with this provision within the stated period shall be required to appear before the Board and pass a satisfactory examination before it shall be lawful for him to again engage in the practice of pharmacy in the Philippine Islands."

Section 16 provides:

"Every person desiring to begin the practice of pharmacy in the Philippine Islands after the passage of this Act shall apply to the Board of Pharmaceutical Examiners for a certificate of registration as registered pharmacist, but no certificate as second-class pharmacist (practicante de farmacia) shall be issued to any such person by the Board. Each applicant shall submit to an examination in the following subjects: General chemistry, organic and inorganic, in an amount covered by a standard college text-book; elements of physics; elements of botany; pharmacognosy; qualitative analytical chemistry; elements of quantitative analytical chemistry; practical pharmaceutical preparations and prescriptions; elementary toxicology; and ability to use the microscope. For each such certificate the secretary-treasurer of the Board shall collect a fee of ten dollars, and the Board of Pharmaceutical Examiners shall issue a certificate of registration as registered pharmacist to each applicant who passes a satisfactory examination in these subjects, and who submits satisfactory proof that he has had at least two years of practical experience in some place where drugs, medicines, and poisons were dispensed and sold at retail and the prescriptions of physicians compounded, and is a graduate of a legally chartered and reputable school of pharmacy: Provided, That any person not a graduate of such a school of pharmacy who submits satisfactory evidence that he has had at least four years of practical experience in some place where drugs, medicines, and poisons were dispensed and sold at retail, and the prescriptions of physicians compounded, and who has satisfactorily passed the examination aforesaid, shall receive such certificate: Provided, also, That graduates of the school of pharmacy of the University of Santo Tomas in the city of Manila who present their certificates of graduation in pharmacy at the meeting of the Board of Pharmaceutical Examiners on the second Tuesday in February, nineteen hundred and three, shall receive certificates of registration without further examination. The Board is further empowered to make such rules and regulations not in conflict with the provisions of this Act as may be necessary to carry said provisions into effect. In case any applicant shall fail to pass a satisfactory examination he shall not again be permitted to present himself for examination until the period of six months shall have elapsed."

From these provisions of the law it is clear that only two classes of persons may at the present time be admitted to practice pharmacy in the Philippine Islands. The first class is composed of those who pass the examination specified in the law. The second class is composed of those who are graduates of the College of Pharmacy of the University of Santo Tomas, who are admitted without examination. These two classes embrace all of the persons who may at the present time receive licenses or certificates to practice pharmacy in the Philippine Islands. There are now practicing in the Philippine Islands persons who compose a third class provided for in section 11 above quoted. This class is made up of persons who, at the time of the passage of Act No. 597, were engaged in the practice of pharmacy in the Philippine Islands and who, within one hundred and twenty days from the date of its passage, registered with the secretary-treasurer of the Board as required by the Act and paid the registration fee corresponding. Under the prohibition of section 7 the practice of pharmacy by a person who does not fall within one of the classes above named is illegal. This means that the Board of Pharmacy is without legal authority to issue a license or certificate of registry to any person who is not embraced within at least one of said classes.

This Act revoked all licenses to practice pharmacy existing at the time it took effect unless the provisions thereof

were fully complied with. A provision was incorporated in the Act under which existing licenses could be continued in force and effect provided the holder thereof was engaged in the practice of pharmacy at the time the Act was passed. AH licenses which were not continued in force by the proper procedure before the expiration of the term of one hundred and twenty days from the 'passage of the Act were ipso facto revoked and terminated.

It is not alleged in the complaint that the plaintiff has passed the examination required by law or that he is a graduate of the College of Pharmacy of the University of Santo Tomas. Neither is it averred that he was engaged in the practice of pharmacy at the time of the passage of Act No. 597, nor that he received or even made application for a certificate during the one hundred and twenty days specified in section 11. In fact, it affirmatively appears from the complaint, and from the argument of counsel for the plaintiff, that has not passed the examination required by law, he is not a graduate of the College of Pharmacy of the University of Santo Tomas, and that he was not engaged in the practice of pharmacy at the time of the passage of Act No. 597, and, therefore, did not register under the provisions of section 11 thereof. This being the case, the complaint shows no legal duty on the part of the Board of Pharmacy to issue to the plaintiff a certificate or license to practice pharmacy without an examination, but, on the contrary, demonstrates that said board would be remiss in its duty under the law if it should do so.

It is essential to the issuance of the writ of mandamus that the plaintiff have a clear legal right to the thing demanded and it must be the imperative duty of the defendant to perform the act required. It never issues in doubtful cases. While it may not be necessary that the duty be absolutely express, it is necessary that it should be clear. The writ will not issue to compel an official to do anything which it is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.

For these reasons we are of the opinion that the complaint does not state facts sufficient to constitute a cause of action and that, therefore, the demurrer thereto must be sustained.

It is therefore adjudged that The demurrer be and the same is hereby sustained and the complaint is dismissed upon the merits, unless within ten days from the entry of this judgment the plaintiff amends the complaint to cure the defects herein specified. So ordered.

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

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