

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TEN YU ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 7482. December 28, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

On or about the 11th day of October, 1911, a complaint was presented against said defendants in the municipal court of the city of Manila accusing them of a violation of section 3 of Ordinance No. 152 of the city of Manila. They were duly arraigned. After hearing the evidence the Hon. Manuel Camus, judge of said municipal court, found each of the defendants guilty of the offense charged and sentenced each of them to pay a fine of P100. From that sentence each of the defendants appealed to the Court of First instance of the city of Manila.

The complaint presented against the defendants alleged:

"That on or about October 10, 1911, in the city of Manila, Philippine Islands, the said defendants, at that time and in that place, did willfully and unlawfully visit and were found in and within a place where opium was smoked and in some way or other used in or upon the human body and where it was sold, distributed, or where it was disposed of in some way or other, to wit, No. 408 Calle Salazar, Binondo, with infraction of the ordinances of the city of Manila."

To the complaint the defendants presented a demurrer. The demurrer alleged:

"I. That the ordinance whereunder this complaint has been presented is and ought to be declared null and void for the reason that the Municipal Board of the city of Manila neither did nor does have legal authority to enact it.

"II. That the ordinance whereunder this complaint has been presented is unreasonable, for it punishes the presence of anyone who may visit an opium joint or a place where opium is kept, sold, or smoked, without considering whether said visit has a lawful or unlawful purpose or is with or without knowledge of the nature of such place.

"III. That the ordinance whereunder this complaint has been presented is and ought to be declared null and void, for it imposes a cruel and excessive punishment upon persons who may without knowledge or criminal intent violate its provisions.

"IV. That the complaint in this case does not contain facts sufficient to constitute a public crime."

After hearing the evidence pro and con, upon the questions presented by said demurrer, the Hon. A. S. Crossfield, judge, overruled the demurrer, stating that "the grounds of demurrer in this case are identical with those in case No. 7949, U. S. vs. Chua Ong et al.[1] I see no reason for changing the conclusion arrived at in that case. The complaint states a cause of action. The demurrer is overruled."

In case No. 7949, U. S. vs. Chua Ong et al.,[1] to which the Honorable Judge Crossfield makes reference in his order overruling the demurrer in the present case, the following, among other things, was given as the ground for

overruling the demurrer:

"Counsel contends that by the general law in relation to the use and possession of opium this provision of the charter of Manila has been placed in abeyance. I am of the opinion that Act No. 1761 which amended and repealed Act No. 1461 of the Philippine Commission has in no way affected the charter of Manila. The Municipal Board then had legislative authority which was conferred upon it, and the authority thus conferred included the making of ordinances necessary to carry out the powers conferred by the charter, and to fix the penalty within certain limits, and one of these powers was to provide for the closing of opium joints and to prohibit the keeping or visiting of places where opium was smoked.

"The ordinance in question prohibits places where opium is smoked or dealt in—prohibits opium joints. The two sections (of the ordinance) are practically the same. The ordinance prohibits the visiting or being present at a place where opium is smoked or sold, and I am of the opinion that this is within the power of the board. The fact that the ordinance adds to the visiting, specifically mentioned in the powers of the board, 'or being present at' does not affect the legality of the prohibition of visiting. * * * The fact that the charter provides that no fine shall exceed \$100 (P200) and no imprisonment shall exceed six months, is not exceeded by the statement that either one of the penalties provided may be imposed by adding thereto that both the fine and imprisonment may be imposed in the discretion of the court.

"With regard to the objection made on the ground that the punishment is cruel and unusual because it provides for the punishment of innocent persons, I am of the opinion that the ordinance does not so provide. It must clearly be read and understood in the light of the general rule with regard to the intention of persons when violating its terms. The person going to a place where opium was sold without knowledge of the fact would not be visiting it in contemplation of this ordinance; neither if he had legal business to transact at a place where opium was sold and visited it for the purpose of transacting his lawful business only and so doing he would not be visiting a place where opium is sold in contemplation of this ordinance. I am of the opinion that the grounds of the demurrer are not well taken. The demurrer is overruled."

Immediately following the overruling of the demurrer the said defendants were placed upon trial. After hearing the evidence the Honorable A. S. Crossfield found that the evidence was insufficient to show that Dee Ong, Uy Chong, Chit Eng, Co Lo, Ong Tui Co, Gaw Kee, and Tian Hi were guilty of the crime charged and dismissed the complaint against them and discharged each one of them from the custody of the law. The lower court found, however, that the evidence was sufficient to show that Ten Yu, Tin Quac, Lim Yan, Ong To, Yeng Sing, and Co King were guilty of the crime charged and sentenced each of them to pay a fine of P100 and each one-thirteenth part of the costs, and in case the fine be not paid, that each of the sentenced defendants be imprisoned at Bilibid Prison until their respective fines be satisfied at the rate of P1 per day.

From that sentence the defendants appealed and in this court presented the following assignments of error:

"I. That the ordinance whereunder this information has been filed is and ought to be declared null and void, for the reason that the Municipal Board of the city of Manila did not have legal authority to enact said ordinance.

"II. That the ordinance whereunder this information has been filed is unreasonable in so far as section 3 thereof is concerned, for it imposes a penalty upon any person who may visit or be present in or within any place where opium is smoked, etc., without considering whether or not said visit was made with a lawful or unlawful object or whether or not said visitor was aware of the nature of said place.

"III. That the ordinance whereunder this information has been filed ought to be declared null and void for the reason that it imposes a cruel and excessive punishment upon persons who may without knowledge or criminal intent violate its provisions.

"IV. That the information filed in this case does not contain facts sufficient to constitute a public crime."

With reference to the first assignment of error above noted, the appellant correctly states the rule relating to the general powers of municipal corporations. It is, that municipal corporations have only such powers as are expressly delegated to them and such other powers as are necessarily implied from such express powers. With this definition of the general powers of municipal corporations, let us examine the powers which are delegated to the city of Manila with reference to the particular ordinance in question. Omitting the provisions of the charter relating to the organization of the city of Manila, we have in section 11 (charter of Manila, Act No. 183) the power to legislate or the power to enact ordinances or laws expressly conferred. In section 16 we find that the Municipal Board of the city of Manila "shall make such ordinances or regulations as may be necessary to carry into effect the discharge of the powers and duties conferred by this Act, and to provide for the peace, order, safety, and general welfare of the city and its inhabitants; shall fix the penalties for the violation of the ordinances, provided that no fine shall exceed \$100 (P200) and no penalty shall exceed six months for a single offense. The board shall see that the laws and ordinances are faithfully executed and enforced; and shall have such further powers and perform such further duties as may be prescribed by law."

By reference to paragraph (ff) of section 17 (Act No. 183), we find that the Municipal Board of the city of Manila is empowered, in addition to the powers enumerated in said section 16, "to provide for the closing of opium joints and to prohibit the keeping or visiting of any place where opium is smoked or sold for the purpose of smoking."

Assuming to act under the authority conferred in said paragraph (ff) of section 17, the Municipal Board of the city of Manila adopted ordinance No. 152, the sections of which relating to the questions under consideration are as follows:

"ORDINANCE No. 152.

"Section 1. Opium joints prohibited.—No person shall keep, conduct, or maintain any opium joint within the city of Manila.

"Sec. 2. Places where opium is smoked or dealt in prohibited.—'No person shall keep, conduct, or maintain any place where opium in any form, or any of its derivatives or compounds, is either smoked or otherwise used in or upon the human body, or is unlawfully sold, given away, or otherwise disposed of.

"Sec. 3. Visiting places where opium is smoked or dealt in is prohibited.—No person shall visit or be present at or in any place where opium, or any of its derivatives or compounds, is smoked or otherwise used in or upon the human body, or unlawfully sold, given away, or otherwise disposed of.

* * * * *

"Sec. 5. Penalty.—Any person violating any of the provisions of this ordinance shall, upon conviction, be punished by a fine of not less than one hundred pesos nor more than two hundred pesos, or by imprisonment for not less than one month nor more than six months, or both such fine and imprisonment in the discretion of the court."

By referring to section 3 of said ordinance and comparing the same with said paragraph (ff), we find an express provision of the charter of the city of Manila, conferring what appears to be full and ample power upon the municipal board for the adoption of said ordinance. It would be difficult to find an ordinance which is more nearly within the express powers conferred upon a municipal board than that in the present case for the adoption of said Ordinance No. 152. In our opinion, the Municipal Board of the city of Manila had full authority to adopt said ordinance and the same is also in accordance with the general spirit and policy of the laws of the state relating to the use of opium.

With reference to the second assignment of error, the appellant alleges that it is unreasonable, in that section 3 imposes a penalty upon any person who may visit the places described in said ordinance. The appellant attempts to make it appear that any person, even though lawfully visiting the places described in said ordinance, might be punished. We think this interpretation of said ordinance is not justified. It will be noted that the complaint charges that the defendants "unlawfully visited, etc." This allegation must be proved by the prosecution. Under this allegation the defendants may prove, if the fact exists, that they visited the place described in the complaint lawfully and not in violation of the provisions nor the spirit of said ordinance.

Ordinances of the class under consideration are not at all uncommon. Many cities have ordinances prohibiting people from visiting houses of ill fame; children from visiting saloons where alcoholic liquors are sold, and many others of a similar class. In the case of *State vs. Botkin* (71 Iowa, 87) the facts are very similar to those in the present case. In that case an ordinance of the city of Des Moines of the State of Iowa provided that "any person who should be found in or frequenting any disorderly house shall be subject to a fine." Under that ordinance the defendant (*Botkin*) was arrested, arraigned and convicted of a violation of the same in the municipal court of said city. He applied for the writ of habeas corpus in the courts of the State, upon the ground' that he was being unlawfully restrained of his liberty, by reason of the sentence under said ordinance, alleging,that the ordinance was void. The court of first instance (the district court) granted the writ of habeas corpus upon the ground that the ordinance was void and illegal. From that conclusion an appeal was taken to the supreme court of the State of Iowa, where the decision of the court of first instance was reversed, the court holding that the city had full authority to adopt said ordinance and that the sentence of the municipal court was valid, and ordered the defendant returned to the custody of the city authorities for the enforcement of the decision of said municipal court. The district court in that case (*State vs. Botkin*) held that the ordinance was void for the reason that it failed to prescribe that, to render one guilty of the offense prohibited, he shall be unlawfully in the house and that, under the language of the ordinance, one found in a disorderly house is guilty, though he be there for a lawful or innocent purpose.

The supreme court, in passing upon that part of the decision of the lower court, said:

"This decision [position] of the court below is clearly unsound, and in violation of the familiar rules of the construction and interpretation of statutes. The subject matter, effect and consequences, and the reason and spirit of a statute must be considered, as well as its words, in interpreting and construing it. A statute, intending to prohibit an offense, will, under these rules, never be applied to an innocent land"] lawful act The offense is prohibited and not the lawful act. Hence, if an act is done which is prohibited by the words of the statute, it may be shown to be lawfully or innocently done. * * * The court below thought that, as the ordinance imposes upon the accused the burden of showing his lawful presence in a disorderly house, it is void; but it is competent for the legislature to prescribe that an offense may be presumed from an act done. The ordinance in question, as we have seen, is intended to forbid unlawful presence in a disorderly house and is to be so interpreted. The presence should be charged in the information as unlawful. As a defense, the person charged may show that he was lawfully or innocently in the house. These rules are of constant application in the administration of the criminal law." (Introduction to Blackstone's Commentaries, by Judge Cooley, sec. 2, pp. 59-62. *Ex Parte Johnson*, 73 Cal., 228.)

In the present case we have the express provision of the charter of the city of Manila (Act No. 183, sec. 17, par. (ff)) conferring upon said city the right to adopt the ordinance in question (152). The punishment-imposed by said ordinance is also within the express power of said city, as defined by its charter.

In our opinion the contention that the ordinance in question is unreasonable is not tenable.

Courts are slow to pronounce statutes invalid or void. The question of the validity of every statute is first determined by the legislative department of the government itself, and the courts should resolve every presumption in favor of its validity. Courts are not justified in adjudging statutes invalid, in the face of the conclusion of the legislature, when the question of its validity is at all doubtful. The courts must assume that the validity of the statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the state. The wisdom or advisability of a particular statute is not a question for the courts to determine—that is a question for the legislature to determine. The courts may or may not agree with the legislature upon the wisdom or necessity of the law. Their disagreement, however, furnishes no basis for pronouncing a statute illegal. If the particular statute is within the constitutional power of the legislature to enact, whether the courts agree or not in the wisdom of its enactment, is a matter of no concern. Upon the other hand, however, if the statute covers subjects not authorized by the fundamental laws of the land or its constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or-beneficent such legislation may seem to be.

Courts are not justified in measuring their opinion with the opinion of the legislative department of the government, as expressed in statutes, upon questions of the wisdom, justice or advisability of a particular law.

In exercising the high authority conferred upon the courts to pronounce valid or invalid a particular statute, they are only the administrators of the public will, as expressed in the fundamental laws of the land. If an act of the legislature is held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental laws of the land and because the will of the people, as declared by such fundamental laws, is paramount and must be obeyed, even by the legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force and application of the fundamental laws of the state. (*Lindsay et al. vs. Commissioners*, 2 Bay (S. C), 61; *State Board of Health vs. City of Greenville*, 98 N.E. Reporter (Ohio, April 2, 1912), 1019, Dissenting opinion of the late Justice Harlan, *Standard Oil Company vs. V. S.*, 211 U. S., 1.)

We find no occasion for modifying or reversing the sentence of the lower court based upon the second assignment of error.

What we have said with reference to the second assignment of error, we believe fully answers the third.

With reference to the fourth assignment of error, we are of the opinion that the facts stated in the complaint are sufficient, if true, to show that the defendants are guilty of the crime charged.

While we have discussed at length each of the assignments of error made by the appellants, nevertheless, the only question, in fact, presented by the appeal under the law, in the first instance, is whether or not the ordinance under which the defendants were sentenced is legal. Having concluded that said ordinance is legal and within the express powers of the Municipal Board to enact, the appeal must be dismissed, with costs in this instance against the appellants in equal parts.

It is therefore ordered and decreed, hereby, that the appeal be dismissed and that the cause be remanded to the lower court for the execution of the sentence heretofore rendered.

Arellano, C. J., Torres, Mapa, Carson, and Trent, JJ., concur.

[1] Court of First Instance, Manila.

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