

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. THE MASTER OF THE S. S. 'TEAN'; DEFENDANT AND APPELLANT.

G.R. No. 7944. October 09, 1914

Ponente: CARSON, J.

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CARSON, J.:

The petition filed in this action is as follows ;

"Comes now the undersigned Insular Collector of Customs, and under authority of section 313 of the Customs Administrative Act, as amended by section 5 of Act No. 864, Act No. 1405, and section 1 of Act No. 1576 of the Philippine Commission, brings to the attention of the court the following, to wit:

"I. That the S. S. 'Tea,' engaged in the foreign trade of the Philippine Islands, was on November 2, 1911, seized for having on board unmanifested contraband opium in violation of section 303 of Act No. 355, and on the same date a notice of such seizure and of the fact that a hearing on same would be had, was sent Messrs. Smith, Bell & Company, Ltd., Manila, agents of the said vessel, copy of which said notice, marked Exhibit A, is attached hereto and made a part hereof.

"II. That the said opium was the property of a person unknown; that the contraband arrived in Manila unmanifested and hidden in the engine room; and that the same was taken therefrom and placed in a banca alongside about midnight by members of the crew of said S. S. 'Tea.'

"III. That the master of said vessel is responsible in such cases, and that he was on November 11, 1911, notified in writing by special messenger of the fact of the seizure of the said vessel and the reason therefor, and was given an opportunity to be heard in reference to the offense charged. Copy of said notice, marked Exhibit B, is hereto attached and made a part hereof.

"IV. That on the 11th day of November, 1911, a hearing was held at the customhouse at Manila, and on November 13, 1911, it was determined that the said vessel had been properly seized on account of having on board contraband opium which was not included in her manifest and a fine in the sum of 1*1,795.20 was assessed for such omission; that the vessel should be held for payment of the penalty imposed, and that the bond for her release should be, and was, the sum of P3,500 Philippine currency, copy of which said decision, marked Exhibit C, is hereto attached and made a part hereof.

"V. That the master and agents of the said S. S. 'Tea' were on the 13th day of November, 1911, notified in writing of said decision, copy of which said notice, marked Exhibit D, is attached hereto and made a part hereof.

"VI. That there are also attached hereto and made a part hereof the following exhibits: Affidavits regarding service of notice and service of decision.

"VII. That notice in accordance with the law has been received to the effect that the master of the vessel refuses to compromise the case by payment of the penalty imposed, but desires this action to be reviewed by the court.

"Therefore, the undersigned prays judgment of this court that the penalty imposed on the vessel be sustained, and that the court make an order authorizing this office to collect said penalty in accordance with law.

(Signed) "H. B. McCOY,
"Insular Collector of Customs."

Exhibit C, to which reference is made in the fourth section of the petition, is as follows:

"UNITED STATES OF AMERICA,

"PHILIPPINE ISLANDS.

"OFFICE OF THE INSULAR COLLECTOR OF CUSTOMS.

"UNITED STATES OF AMERICA, Plaintiff,

versus Idn. 435.
decision.

"STEAMSHIP 'TEAN,' Defendant.

"MANILA, P. I., November 13, 1911.

"This case arises by virtue of the provisions of section 313 of Act No. 355, as amended, and relates to the seizure of the S. S. 'Tean' for violation of section 303 of Act No. 355.

"At a hearing had at this custom house on the 11th day of November, 1911, at which there were present the master and a representative of the agents of the vessel, it was found and determined that the S. S. 'Tean' is a vessel from a foreign port which arrived here consigned to Messrs. Smith, Bell & Co., Ltd., as local agents; that on the 31st day of October, 1911, agents of the Bureau of Customs seized on board the steam launch 'Carmen,' 100 tins of prepared opium, part of 200 tins which had been taken on board said steam launch from the S. S. 'Tean' anchored in the bay, the other 100 tins having been thrown overboard into the Pasig River and subsequently recovered; that this opium had been delivered by the Chinese carpenter of the S. S. 'Tean' upon receipt of a countersigned letter given him by one Alejandro Bautista; that said opium was carried from the engine room and placed on board a banca alongside by three Chinese persons under direction of the ship's carpenter; that the banca was moved about 25 yards to where the steam launch 'Carmen' was anchored with all lights out, waiting for same; that the said steam launch then sailed up the Pasig River and when opposite the customhouse a signal was given by one of the secret service agents on board, and the same boarded by customs officers and the opium seized.

"At said hearing it was further found and determined that the value of the opium is \$528 and that the duties due thereon amount to \$184.80. Section 303 of Act No. 355 reads in part as follows:

"" * * * if any merchandise be found oit board any vessel from a foreign port which is not included in her manifests, * * * the master shall forfeit an amount equal to double the duties fixed therefor: Provided always, That if it appears to the Collector that such omissions occurred with intent to defraud the revenue, the master shall in addition forfeit an amount equal to the value of the merchandise not manifested, * * *.'"

"In reviewing the evidence, the undersigned finds that the opium was brought to the Philippine Islands on board the S. S. 'Tean;' that an article such as opium coming in such a large quantity as was discovered in this case, must be considered as merchandise, and therefore a part of the cargo of the vessel, whether it came on

board regularly manifested or not; that the master is responsible if such merchandise is found on board unmanifested, and also for the subordinate officers and men in so far as their actions affect the cargo of the vessel; that the fact such cargo was omitted from the manifest shows plainly an intention to defraud the revenues, and in conformity with the provisions of section 303 of Act No. 355, a fine of P1,795.20 Philippine currency be imposed on the master of the S. S. 'Tea'.

"Therefore it is adjudged and decreed that the master of the S. S. 'Tea' shall forfeit to the Government of the Philippine Islands the sum of P1,795.20 Philippine currency, as provided in section 303 of Act No. 355 for foreign vessels arriving at ports of the Philippine Islands with unmanifested cargo on board; that in default of prompt payment of said fine by the master or agents of said vessel, a warrant for the arrest and detention of said vessel issue, and the vessel in question held for payment of the penalty, as provided in section 343 of Act No. 355; and that the bond therefor be fixed at P3,000 Philippine currency.

(Signed) "H. B. McCoy
"Insular Collector of Customs."

The case appears to have been submitted upon the following stipulation, made in writing and filed with the court:

"For the purpose of enabling the court to render judgment on the pleadings, defendant offers to admit, and does admit, every allegation of the petition.

"BRUCE, LAWRENCE, ROSS & BLOCK,
(Sgd.) "W. H. LAWRENCE,
"Attorneys for defendant."

"The plaintiff consents to a determination of the action upon the pleadings and the records submitted to the court by the plaintiff.

(Sgd.) "J. W. FERRIER,
"Attorney for plaintiff."

The dispositive part of the opinion filed by the trial judge is as follows: "It is accordingly considered and adjudged that the fine of P1,795.20, found to be proper by the Insular Collector of Customs, be imposed upon the defendant, in accordance with Act No. 355, section 303; and that in default of payment thereof the said Steamship 'Tea' be sold, after due advertisement, to satisfy this judgment and the costs of the proceeding, which are further taxed against the defendant."

Counsel for appellant insists that, "The question presented is exactly that which would be raised by a demurrer, except that the decision will be final, and the court need only read the complaint and determine whether or not it states a cause of action;" and that the petition filed by the Collector does not recite facts upon which a judgment imposing a fine upon the defendant can properly be entered, in that it does not allege that the steamship Tea came to the Islands from a foreign port; or that she had any quantity of opium aboard; or that any goods on board were omitted from the manifest; or the amount and value of the manifested goods, by relation to which the penalty could be imposed under the law; or that the omission from the manifest occurred with intent to defraud the revenues. Counsel contends that the recital contained in the fourth subdivision of the petition to the effect that certain facts were determined at a hearing held at the customhouse is not an allegation of the truth of those facts, and that his admission of the truth of the allegations that these facts were determined at the hearing is by no means an admission of the truth or correctness of the findings as to these facts made at the hearing.

Without entering on a critical examination of the petition to ascertain whether all of appellant's contentions could be sustained under a literal construction of its recitation of facts, we agree with him that the petition contains no allegation as to the amount or value of the unmanifested opium which was found on the Tea, and that, since the

fine prescribed by the statute for having on board unmanifested opium must be fixed by relation to its amount and value (sec. 303 of Act No. 355), the petition does not set forth facts which, if proven, would be sufficient to sustain a judgment imposing a fine for a violation of the statute.

As to the amount and value of the opium the petition merely alleges that the Collector of Customs, in the course of proceedings duly authorized by law, found as a fact in his decision that some two hundred tins of unmanifested opium valued at \$528 had been found on the vessel. It is very clear that the admission by the defendant of the truth of this allegation is by no means an admission of the truth of the finding by the Collector as to the amount and value of the unmanifested opium.

The Solicitor-General contends, however, that the recital in the petition that the Collector of Customs had conducted proceedings in accordance with law, in the course of which facts were determined which, if true, would justify the so called administrative fine imposed by him, is a sufficient allegation of fact to sustain the judgment of the Court of First Instance. In support of this contention, counsel rely on the following excerpt from the opinion of the trial court, which was quoted at length in our opinion in the case of the Insular Government vs. Ling Su Fan (15 Phil. Rep., 58):

"Nothing contained in the said laws authorizes the Court of First Instance to hold a new trial, or to admit new evidence in connection with the facts determined and decided upon by the Collector of Customs, in order to render judgment in view of the result thereof, and by the provision in section 313 that the judgment of the court in such proceedings shall be limited to one against the property seized, it must be clearly understood that it is not the duty of the court to make any declaration of rights in the matter submitted to it, but merely to decide with regard to the confiscation or forfeiture ordered by the Collector of Customs, either affirming or reversing it in view of the procedure followed before the Collector."

But an examination of our opinion in that case clearly discloses that we did not quote with approval the above-cited excerpt from the opinion of the trial court as asserted by counsel in his brief in this case. On the contrary, it will be found that we wholly disregarded it, and in ruling on an assignment of error alleging that the findings of fact were not supported by the evidence, we reviewed the evidence which was submitted to the trial court, and sustained the findings of the trial court by reference to that evidence, and not merely by reference to the findings of the Collector.

The pertinent provisions of the statute touching proceedings of this nature, as found in section 5 of Act No. 864, amended by Act No. 1405, are as follows:

"In cases appealed from the collectors of customs other than the Collector of Customs for the Philippine Islands at Manila, and in cases arising at Manila, if no compromise is effected with the Collector of Customs for the Philippine Islands, then and in that case it shall be the duty of the Collector of Customs for the Philippine Islands forthwith, on receiving notice from the person or agent whose property has been seized that he will not consent to a compromise, to file a record of all the proceedings in the Court of Customs Appeals, with a petition reciting the facts, asking the judgment of the court upon the issue of fine or penalty or confiscation or forfeiture, and praying, upon judgment, for a public sale of the seized property after due advertisement to satisfy the judgment. Process shall issue against the owner or agent in possession of the property, and the pleadings and procedure shall be, as in other cases, in the Court of Customs Appeals, of a summary character regulated by orders of the court. The sale, if ordered, shall take place in the district of seizure after four weeks' posting of notice thereof at the door of the office of the collector of customs of the district and the publication once a week for four weeks of notice in any newspaper of general circulation in the district of seizure, if any, and also after publication, in the discretion of the court, of the same number of notices in a newspaper of general circulation in Manila. The judgment of the court in such proceedings shall be limited to one in rem against the property seized."

We "think that these provisions clearly contemplate a trial in the Court of First Instance, wherein judgment is rendered upon the facts as set forth in the petition and disclosed by the evidence adduced at the trial. Section 288 of Act No. 355 as amended by section 3 of Act No. 1405 provides that:

"The evidence taken before either the collector of customs or the Collector of Customs for the Philippine Islands, may, if competent, be used before said Court of First Instance for the city of Manila, and said court may receive further evidence pertinent to the issue * * *

"The court shall have the power to determine all questions arising in the appeal * * *."

It seems very clear that the facts on which the judgment of the Court of First Instance must be based are not the facts as found by the Collector, but the facts as disclosed by the evidence thus submitted to the court. In the language of the statute, the proceedings had by the Collector of Customs have for their object the ascertainment of the amount of "the fine or penalty which in his judgment ought to be imposed," and which he may accept by way of compromise, if the interested party desires to pay it. We do not think that the legislator intended that the conclusions arrived at by the Collector of Customs should constitute a final and conclusive adjudication of the liability of the accused person or of his property to the fines, penalties, forfeitures, or confiscations prescribed by the statute. If such had been the intention of the legislator, it would seem that the judgment when rendered by the Collector would have been given a more binding effect than that of a mere "compromise" which the accused person might accept or decline at his pleasure; and it would seem, furthermore, that it would have been wholly unnecessary to provide a vain and useless formality in the form of a trial in the Court of First Instance, wherein judgment is prayed upon "the issue of fine or penalty or confiscation or forfeiture," although the real issue is limited to the question whether the Collector of Customs did or did not, in the course of the prescribed proceedings, declare that in his judgment a certain fine should be imposed or certain property forfeited or confiscated.

There seems to be some question as to the precise meaning and effect of the "stipulation made in writing by the parties and filed with the court." Defendant prayed for "judgment on the pleadings," admitting the truth of all the allegations of the petition; and plaintiff consented to "a determination of the action" upon "the pleadings and the records submitted to the court."

So far as it appears from the bill of exceptions "the pleadings and the records"—and the only pleadings and records—submitted to the court at the time of the filing of the stipulation were the petition of the plaintiff and the exhibits thereto attached, consisting of the decision of the Collector, copies of the notices of the various steps in the proceedings had before the Collector, and affidavits regarding service of notice and of the decision of the Collector.

It is very clear, therefore, that the only issue before the court when the case was submitted for judgment was the defendant's prayer for judgment on the petition, he admitting the truth of every allegation contained therein. But such a prayer for judgment was in effect no more than a demurrer to the petition, and in this jurisdiction, in the event of a judgment in favor of the defendant, or, in other words, in the event the demurrer is sustained, a reasonable time must be allowed for the amendment of the petition.

Counsel for defendant seems to think that by substituting a formal prayer for "judgment on the pleadings" together with an admission of the truth of the allegations of the complaint or petition, for the filing of a demurrer, he can deprive the plaintiff of his right to amend in the event that the complaint or petition be held to be defective. But the right to amend under such circumstances is secured to the plaintiff by the express provisions of section 110 of the Code of Civil Procedure in ordinary actions, and we think that his right so to do should be respected in all cases.

Under the practice in this jurisdiction, which has its origin in express statutory provisions, a judgment on the pleadings is never properly entered in any case wherein a demurrer might have been interposed instead of a technical prayer for such judgment. A judgment on the pleadings is a form of judgment which has come into use in practice under the reformed codes of procedure; hence it is never properly entered unless clearly authorized by the statute. Manifestly, where the statute provides for the filing of a demurrer under certain conditions and prescribes the procedure to be followed when judgment is rendered thereon, there is no statutory authority for the filing of a technical motion for a judgment on the pleadings, instead of a demurrer, and the entry of a judgment which would deny the opposing party the right of amendment secured to him by the statute.

The proceedings in cases of this kind being conducted without regard to the usual formalities prescribed in ordinary actions, we think that although the motion of defendant was for a judgment on the pleadings, nevertheless, as stated by counsel for defendant in his brief, "the question presented is exactly that which would be raised by demurrer," and the motion will be disposed of as though it were in fact a demurrer to the petition.

The judgment of the court below should be reversed and the record returned to the court below, where judgment will be entered dismissing the petition unless plaintiff within five days from the receipt of notice that the record has been received in the court below, amends his petition by setting forth sufficient facts to constitute a cause of action. So ordered.

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

DISSENTING

MORELAND, J.

I do not agree to the judgment or the argument adduced to support it. The judgment of the court below was passed upon what was, in effect, a stipulation of facts, namely, those set out in the petition, and was, therefore, a judgment on the merits. I find nothing in the pleadings or acts of the parties constituting a demurrer or anything resembling it.

As a necessary result, the facts upon which the judgment is based being insufficient to support it, the judgment should be reversed and the petition dismissed on the merits.

Araullo, J., dissents.

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