

JOAQUIN DE VILLATA, PETITIONER, VS. J. S. STANLEY, ACTING INSULAR COLLECTOR OF CUSTOMS, RESPONDENT.

G.R. No. 8154. December 20, 1915

Ponente: CARSON, J.

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CARSON, J.:

In the language of plaintiff's brkrf "This an application for a writ of prohibition directed against the Collector of Customs and intended to restrain him from enforcing against plaintiff the provisions of Customs Administrative Circular No. 627. The complaint alleges that the plaintiff is the master of S. S, Vizcaya of the coastwise trade; that as such captain, on July 6, 1912, when sailing from the port of Gubat to the port of Legaspi, P. I., he failed to notify the postmaster of the former port, in advance, of his intended sailing, and therefore failed to carry the mails between said ports; that defendant is threatening suspend or revoke the license of plaintiff by reason of said facts, under and by virtue of the terms of Customs Administrative Circular No. 627, to the great and irreparable damage of plaintiff'

Customs Administrative Circular No. 627 is as follows:

"Prescribing regulations for the transportation of mails on vessels engaged in the Philippine coastwise trade,

"MANILA, December 24, 1910.

"PARAGRAPH I. Every vessel to which a license is granted under the provisions of section 117 of Act No. 355 to engage in the coastwise trade of the Philippine Islands * * * shall carry mail tendered for transportation in a safe and secure manner, and shall keep the same free from injury by water or otherwise. Masters, owners, or agents of vessels shall give prompt advance notice of the intended sailing thereof to the postmaster at each port of departure in ample time to permit the making up of mails for dispatch. Any changes in such sailings shall also be promptly communicated to the postmaster.

"PAR. II. Mails carried by vessels shall be delivered at ports of call on shore or on a wharf immediately after arrival and prior to the discharge or lading of any cargo, and shall be taken from shore or wharf just before the vessel's sailing time, except at ports where the postal authorities have arranged for ship-side delivery.

"PAR. III. Each Vessel mentioned in the preceding paragraph shall be provided with a lock box having a slot in the top or side thereof to receive letters, papers, or other mail matter delivered on board the vessel after the mails have been closed at the postoffice for that particular voyage. All mail matter deposited in such box shall be delivered by the master, or his representative, to the postmaster at a port of call where a postoffice is located.

"PAR. IV. The master, owner, agent, or other person in charge of a vessel shall be legally liable for the loss of or damage to mail in his custody, or in the custody of his representatives or agents.

"PAR. V. The license of the master of any vessel engaged in the coastwise trade of the Philippine Islands may be suspended or revoked by the Insular Collector of Customs for failure to comply with or strictly enforce the regulations governing the transportation of mails.

"PAR. VI. Postmasters throughout the Islands are requested to promptly report to this office in writing any Unnecessary delay in the handling of mails transported by vessels, or failure on the part of masters thereof to comply with the requirements of this circular.

"PAR. VII. Philippine customs officers shall give due publicity to the terms of this circular." The case is submitted to us upon the plaintiff's demurrer to the defendant's answer to the complaint.

As we understand the issues raised by the pleadings, the real questions submitted to us for adjudication are: First. Has the Government of the Philippine Islands the power, through any of its agencies, to require, with reference to all vessels engaged in the coastwise trade, that "Every vessel to which a license is granted under the provisions of section 117 of Act No. 355 to engage in the coastwise trade of the Philippine Islands * * * shall carry mail tendered for transportation in a safe and secure manner, and shall keep the same free from injury by water or otherwise. Masters, owners, or agents of vessels shall give prompt advance notice of the intended sailing thereof to the postmaster at each port of departure in ample time to permit the making up of mails for dispatch. Any changes in such sailings shall also be promptly communicated to the postmaster?"

Second. Assuming that such power exists, was the Collector of Customs clothed with power to promulgate a circular at the date of the issue of Customs Circular No. 627, prescribing that masters of all vessels engaged in the coastwise trade must comply with such a regulation, and to penalize them for failure so to do by suspending or revoking their licenses? Both these questions must, we think, be answered in the affirmative.

We shall first examine the question of the power of the Philippine Government to prescribe and enforce a regulation of this kind at the date of issuance of Customs Circular No. 627.

A decree dated August 4, 1863, provided as follows:

"In the matter of the investigation made for the application of the provisions now in force relative to the notice to be given in advance to the postoffice of the sailings of ships, in the exceptional case of a ship just arrived in port and which has to sail immediately for the convenience of the interests of its owners or consignees,

"Having considered the ordinances relating to packet boats and other royal orders and superior decrees imposing upon the captain of every ship the duty of giving notice to the postoffice four days in advance at least of the date they are to sail and the port of destination,

"Considering that the actual application of such provisions might affect in a remarkable way the commercial interests in the very exceptional case spoken of, where the ship just anchored should have to set sail again before the period of four days referred to,

"The capitxmia del puerto, the administration general de aduanas, comandancia general de earabineros and the administration general de correos, having been heard,

"This superior civil government ordains: That when a ship falls within the precise exceptional case raised by the within resolution, its captain shall only be required to give, from the very instant of determining the sailing of the ship, immediate notice to the postoffice stating the day and hour in which the sailing must be made,

"For the purposes that may be proper, let this decree be communicated to the comandanda general de marina, capitania del puerto de Manila and Cavite. and the administration general de correos, and let same be published in the Gazette for general information. Report to the government of H. M. and file." (Berriz, Diccionario de la Administration de Filipinos, 1888, vol. 1, p. 516.)

A later decree dated January 13, 1876, was as follows:

"Having considered the consultation made by the comandancia general de marina proposing the amendment of section 7 of the superior decree of December 18, 1868, relative to the duty imposed upon shipowners or

consignees of steamers whether national or foreign, plying between this port and the other ports of the Archipelago or China and vice versa, of giving four days' notice before the day they are to sail, to their great prejudice; and

"Having considered the reports submitted by the direction general de administration civil and the administration general de correos:

"Considering the fact that since that superior order was enforced, the fortunate increase of steamers and consequently the frequent repetition of voyages made by them, is evident, and therefore, this circumstance alone would change the object or reason which at that time made it necessary to impose the duty referred to in said section 7.

"Considering the importance and value at certain times of the prompt clearance of one of its ships to a commercial firm which is at all times worthy of protection by the government.

"This general government ordains as follows:

"1. The period of four days prescribed by section 7 of of the superior decree of December 18, 1868, is reduced to two.

"2. The shipowners or consignees of steamers, whether national or foreign, plying between this port and the other ports of the archipelago or China, and vice versa, shall give notice to the captain of the port's before midday, in order that the postoffice may have immediate notice of the sailing at an hour that may enable it to insert same in the Gazette of next day, and the ship may sail in the afternoon of the day next following.

"3. The office of the captain of the port will report daily to the administration general de correos all ships that at 12 o'clock, noon, may have requested the visita de salida and in the event of there being none a report shall be sent stating that fact.

"4. The report of the captain of the port's office must be at that administration general before 2 o'clock, p. m., every day.

"5. Captains and consignees of ships can in no case request the visita de salida without the period of forty-eight hours intervening between the time they report and the visit, so as to give opportune notice to the administration de correos.

"6. The centro de correos shall send the notices to the Gazette and other newspapers, and shall post them besides on a bulletin board at the door of the postoffice." (Berriz, *Diccionario de la Administracion de Filipinas*, 1888, vol. 1, pp. 528, 529.)

The decree just cited is the latest provision of Spanish law dealing with the subject matter under consideration to which our attention has been invited, and we assume that it prescribed the law in force in these Islands at the date of the American occupation. An examination of its terms leaves little room for doubt that under Spanish sovereignty the Government of these Islands assumed and exercised the right to prescribe reasonable regulations requiring vessels trading in the Philippine Islands to carry the mails and to give due notice of their sailing hours to the postal authorities. Indeed it is a matter of common knowledge that, under the laws and regulations in force at the time of the change of sovereignty, all vessels engaged in the coasting trade were required to carry the mails, and to furnish the postal authorities with due notice of their sailing hours. There is no allegation in the pleadings denying the continuance in force of this practice under American sovereignty down to the date of the issuance of the above cited Customs Administrative Circular; and we are not advised of the enactment or promulgation of any local statute or regulation prior to that date which would excuse these vessels from compliance with the regulations in force under the old sovereignty with regard thereto. Counsel for the plaintiff do not challenge the power of the former sovereign to promulgate the above-cited decrees regulating the postal service, and reiy

wholly upon their contention that whatever may have been the state of the law prior to the enactment of the Philippine Bill of Rights (Act of Congress, July 1, 1902) the Philippine Government was thereafter denied the power to enforce or enact such regulations.

The inquiry, therefore, as to the power of the Philippine Government, through its appropriate agents, to enact and enforce a regulation requiring all vessels licensed to engage in the interisland trade to transport the mails and to give timely notice of their sailing hours to the local postal authorities may be limited to a consideration as to whether or not it lost the power so to do, by the enactment of the Philippine Bill of Rights.

We are of opinion, and so hold, that there is nothing in the Philippine Bill of Rights which deprived the Philippine Government of the power to make and enforce reasonable regulations of this nature with which it was clothed prior to the enactment of that statute. It is contended that to require the master of a vessel to transport the mails and to give timely notice to the postal authorities of the hour of his departure may in some instances cause grave loss and serious inconvenience to her owner by preventing her departure at an earlier hour; and that in all instances it imposes an obligation upon the owner to render services which the Government has no power to require in the absence of a contract, and without just compensation.

It must not be forgotten, however, that vessels licensed to engage in the interisland trade are common carriers; and that as to them, there is an extensive field of regulation and control which may properly be exercised by the state without contravention of the provisions of the Philippine Bill of Rights or the Constitution of the United States; and this notwithstanding the fact that the enforcement of such regulations may tend to restrict their liberty, and to control the free exercise of their discretion in the conduct of their business to a degree and in a form and manner which would not be tolerated under the constitutional guarantees with relation to the private business of a private citizen.

Common carriers exercise a sort of public office, and have duties to perform in which the public is interested. Their business is, therefore, affected with a public interest, and is subject to public regulation.

The nature of the business in which they are engaged as a public employment, is such that it is clearly within the power of the state to impose such just and reasonable regulations thereon as in the interest of the public it may deem proper. Of course such regulations must not have the effect of depriving an owner of this property without due process of law, nor of confiscating or appropriating private property without just compensation, nor of limiting or prescribing irrevocably vested rights or privileges lawfully acquired under a charter or franchise. But aside from such constitutional limitations, the determination of the nature and extent of the regulations which should be prescribed rests in the hands of the legislator. (*New Jersey Steam Nav. Co. vs. Merchants' Bank*, 6 How., 344, 382; *Munn vs. Illinois*, 94 U. S., 113, 130.)

"Of course this power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights the state can not require a railroad corporation to carry persons or property without reward. Nor can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law. (*Chicago etc. R. Co. vs. Minnesota*, 134 U. S., 418; *Minneapolis Eastern R. Co. vs. Minnesota*, 134 U. S., 467.) But the judiciary ought not to interfere with regulations established under legislative sanction unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public, that is, judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack upon the rights and property under the guise of regulations as to compel the court to say that the regulations in question will have the effect to deny just compensation for private property taken for the public use. (*Chicago etc. R. Co. vs. Wellman*, 143 IT. S., 339; *Smyth vs. Ames*, 169 U. S., 466, 524; *Henderson Bridge Co. vs. Henderson City*, 173 U. S., 592, 614.)" (*Fisher vs. Yangco Steamship Co.*, 31 Phil. Rep., 1.)

We are of opinion that a regulation requiring all coasting vessels licensed to engage in the interisland trade to carry the mails and give prompt advance notice in all cases of intended sailings in ample time to permit dispatch of mails, and of changes of sailing hours, (manifestly with a view to make it possible for the post-office officials to tender mail for transportation at the last practicable moment prior to the hour of departure) is a reasonable regulation, made in the interests of the public, which the state has a right to impose when it grants licenses to the vessels affected thereby. We are not now considering the question of the right of these vessels to direct compensation for the transportation of such mail when tendered. We are considering merely the right of the state to require all licensed coasting vessels to hold themselves in readiness to receive and to carry mail when duly tendered, and to give such reasonable notice as to their sailing hours as may be necessary to secure ample time for the tender of the mail before the sailing hour. Certainly we would not be justified in holding that such a regulation is "so plainly and palpably unreasonable" and "such a flagrant attack upon the rights of property under the guise of regulations" as to compel the court to say that its enforcement would be "equivalent to the taking of property for public use without such compensation as under all the circumstances is just both to the owner and to the public."

Considerable expenditures of public money have been made in the past and continue to be made annually for the purpose of securing the safety of vessels plying in Philippine waters. To this end lighthouses have been erected; wharfs and docks constructed; and buoys, bells and other warning signals maintained at points of danger. Largely for the purpose of conveying timely warnings of threatening weather to those that go down into the sea in ships, appropriations are made for the support of a Weather Bureau. Coast and geodetic surveys are conducted to keep them informed as to the dangers hidden beneath the treacherous sea. Licensed pilots are provided to insure safe entry into the dangerous ports and harbors throughout the Islands. Maps, charts and general information as to conditions affecting travel by water are kept up to date, and furnished all vessels having need for them. In a word, the Government unhesitatingly spends a considerable part of the public funds wherever and whenever it appears that the safety and even the convenience of the shipping in Philippine waters will be advanced thereby. Can it be fairly contended that a regulation is unreasonable which requires vessels licensed to engage in the interisland trade, in whose behalf the public funds are so lavishly expended, to hold themselves in readiness to carry the public mails when duly tendered for transportation, and to give such reasonable notice of their sailing hours as will insure the prompt dispatch of all mails ready for delivery at the hours thus designated?

It is urged, also, that the promulgation and enforcement of a law or regulation requiring coastwise trading vessels to make provisions for the transportation of the mails when tendered, and to give notice of their-sailing hours in ample time to permit the dispatch of the mails, is in effect to deprive the owners of their property without due process of law, to deny them the equal protection of the laws, and to violate the provisions of the Bill of Rights which prescribe that the rule of taxation shall be uniform.

We cannot agree with any of these propositions. It is only when the owner of a vessel enters the quasi-public employment of a common carrier that regulations of this kind begin to affect or control the conduct of his business, and he cannot be heard to complain that he is deprived of his property without due process of law when he elects, of his own free will and accord, to secure a license as a common carrier in Philippine waters, and to engage in a business, one of the conditions of which is that he will comply with such regulations. Under the law in force in these Islands at the time of the change of sovereignty, and of the enactment of the Act of Congress the owners of all licensed coasting vessels were required to comply with regulations of this character, as. one of the conditions upon which they were permitted to engage in the quasipublic employment of carriers in the interisland trade. Manifestly there is no merit in a claim by the owner of one of these vessels that the enforcement of these regulations amounts to a deprivation of property without due process of law. The owner of every coasting vessel in these Islands licensed to engage in the interisland trade, prior to the promulgation of Customs Administrative

Circular No. 627, took out his license and dedicated his vessel to the quasipublic employment of a common carrier with full knowledge of the existence of regulations such as that now under consideration, and of the assertion and assumption by the Government of power to promulgate and enforce such regulations. It is futile, therefore, for any such owner to contend that the promulgation or enforcement by the Government through its proper agencies of any reasonable order of this kind, deprives him of property without due process of law. No one is compelled to comply with these regulations unless he voluntarily enters upon the business which they affect, and if he does enter such business he cannot claim that he is unlawfully deprived, without due process of law, of that which he voluntarily agrees to surrender.

As to the contention that the regulation under consideration denies to the owners of coastwise trading vessels the equal protection of the laws, and violates the rule prescribing uniformity of taxation it should be sufficient perhaps to say that if regulations of this kind be regarded as in the nature of a tax upon the vessels affected thereby, the tax cannot be attacked for lack of uniformity so long as it is laid uniformly upon all the members of the class to which it extends. In this connection, the argument of counsel (omitting citation of authority) is substantially as follows:

"The constitutional law requiring uniformity of taxation imposes the duty upon the State directly to lay its burdens uniformly and evenly upon all. It does not permit the State to lay any particular burden, e. g. the carriage of the mails, upon any person or class of persons, on the ground that said person or class may turn about and divide the burden with other persons or amongst a slightly larger class. The carriage of the public mails is a public, governmental function to be performed at public cost. It is not permissible to impose that burden upon the carriers either absolutely or under the implied understanding that the carriers will shift the burden to that portion of the public who constitute the shippers or patrons of the carriers.

"Nor yet is the circular in question capable of justification on the ground that the service required is not a gratuitous one, but one required in consideration of, and in exchange for the coastwise license, or (in the case of foreign vessels) the permission to visit at two Philippine ports. It is a matter of law that no coastwise vessel can engage in its business without the prescribed license. To require therefore that a vessel must undertake the free carriage of mails in order to procure a license is the exact equivalent of requiring that it choose between carrying all mail matter free of charge and going out of business.

"Once grant that the State may require free carriage of mails as a condition for the securing of a license and you must also grant the right to require the free clothing of the Constabulary as a condition for the license to import merchandise and to do business on the Escolta. There is no length to which the parallel may not be logically carried, and if the requirements of this circular could be validated on this ground, the Insular Government could exist handsomely without taxation by the similar levy of tribute in kind as a condition precedent to the exercise of vocations, trades and professions. It goes without saying, however, that a State so supported would not be imposing its taxation uniformly as is required by the fundamental law of our land."

Premising what follows with the observation that our statutes, although they require "uniformity" of taxation, do not prescribe the rule as to "equality" in taxation which prevails in some jurisdictions; we think these contentions of counsel can best be disposed of by a few citations from the highest text-book and judicial authorities.

The distinction between "equality" and "uniformity" in taxation is thus stated in Black on Constitutional Law, page 392, citing Miller, Const., 241:

"In practice, therefore, 'equality' in taxation means to be called upon to pay taxes, which taxes shall be strictly proportioned to the relative value of their taxable property. And 'uniformity' in taxation means that all taxable articles or kinds of property, of the same class, shall be taxed at the same rate. It does not mean that lands, chattels, securities, incomes, occupations, franchises, privileges, necessities, and luxuries shall all be assessed at the same rate. Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times.

"Applying the rule here laid down the tax in question seems to be sufficiently uniform.

"Neither does the fact that the imposition of the tax may result in double taxation necessarily affect its validity. (1 Cooley on Taxation, 3d ed., 389)

"The power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use, or enjoyment; to every species of possession; and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading, and at no point does the power of the Government affect more constantly and intimately all the relations of life than through the exactions made under it. * * * The power to tax rests upon necessity, and is inherent in every sovereignty. The legislature of every free State will possess it under the general grant of legislative power, whether particularly specified in the constitution among the powers to be exercised by it or not. No constitutional government can exist without it, and no arbitrary government without regular and steady taxation could be anything but an oppressive and vexatious despotism, since the only alternative to taxation would be a forced extortion for the needs of government from such persons or objects as the men in power might select as victims. Chief Justice Marshall has said of this power: 'The power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government a right of taxing themselves and their property; and as the exigencies of the government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse.'

"The same eminent judge has said in another case: The power of legislation, and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself, and need not be reserved where property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature. This vital power may be abused; but the interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally.' And again, the same judge says, it is 'unfit for the judicial department to inquire what degree of taxation is the legitimate use, and what degree may amount to the abuse, of the power (Numerous cases cited in support of the text.) Constitutional Limitations, p. 587, Cooley.

"It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is, therefore, beyond the constitutional power of Congress.

"The first answer to this is that the judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution. (Veazie Bank vs. Fenno, 8 Wall., 533, 548.)

"Whilst, as a result of our written constitution, it is axiomatic that the judicial department of the government is

charged with the solemn duty of enforcing the Constitution, and therefore in cases properly presented, of determining whether a given manifestation of authority has exceed the power conferred by that instrument, no instance is afforded from the foundation of the government where an act, which was within a power conferred, was declared to be repugnant to the Constitution, because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust. To announce such a principle would amount to declaring that in our constitutional system the judiciary was not only charged with the duty of upholding the Constitution but also with the responsibility of correcting every possible abuse arising from the exercise by the other departments of their conceded authority. So to hold would be to overthrow the entire distinction between the legislative, judicial and executive departments of the government, upon which our system is founded, and would be a mere act of judicial usurpation. (*McCray vs. U. S.*, 195 U. S., 27.)

"But, it is insisted, this taxation is so unequal and arbitrary in the fact that it taxes a business when carried on by a corporation, and exempts a similar business when carried on by a partnership or private individual, as to place it beyond the authority conferred upon Congress. As we have seen, the only limitation upon the authority conferred is uniformity in laying the tax, and uniformity does not require the equal application of the tax to all persons or corporations who may come within its operation, but it is limited to geographical uniformity throughout the United States. This subject is fully discussed and set at rest in *Knowlton vs. Moore* (178 U. S., 41; 44 L. ed., 969; 20 Sup. Ct. Rep., 747), and we can add nothing to the discussion contained in that case. (*Flint vs. Stone Tracy Co.*, 31 Sup. Ct. Rep., 342, 352.)"

It will be observed that we do not consider or decide the question discussed in plaintiff's brief as to the power of the Philippine Government to condition the grant of licenses to vessels engaged in the interisland trade on their pgreement to transport the mails free of charge. We do not think that question is squarely submitted to us by the pleadings. Except, perhaps in paragraph III, the circular itself nowhere requires or imposes upon the vessels affected thereby the duty of carrying the mails free of charge; and it is manifest both from the complaint and the brief of counsel that the prayer for prohibition is not based on that relatively unimportant provision of the circular.

The real contention arises over the provisions of paragraph I, which require trading vessels to carry mails tendered for transportation in a safe and secure manner. But this does not necessarily require these vessels to accept and to carry mail free of charge. It is only when goods are lawfully tendered that common carriers may be compelled to carry them, and it must be presumed that the author of the circular had in mind a lawful tender of mails when he Wrote this paragraph. If a vessels may not be required to carry mail without direct compensation, or a contract providing for such compensation, it must be presumed that the Collector did not intend to require vessels to accept mail without tender of reasonable compensation for such services or provision for payment by contract or otherwise, and that this paragraph was intended merely as a regulation requiring the acceptance of all mail thus lawfully tendered and the safe transportation of such mail when accepted for transportation.

The complaint does not allege, except perhaps by inference, that the defendant or any officer of the Government has undertaken or is undertaking to compel the plaintiff master of the *Vizcaya*, or the owners of that vessel, over their protest, to carry the mails free of charge. The allegations of the complaint in this regard are substantially limited to the allegations set forth in paragraph 5 thereof, to the effect that neither the circular nor the laws of the Philippine Islands contain any provision for compensation for the services required under the terms of the circular, and that by virtue of the circular the plaintiff master and his vessel are threatened with the prescribed penalties unless they render the required services without compensation. But unless the circular be construed as requiring the transportation of mail without direct compensation, and we are of opinion that it does not necessarily have that effect, the complaint nowhere alleges or charges that the defendant Collector of Customs requires or threatens to require the plaintiff captain or his vessel to carry the mail free of charge.

Counsel in his brief challenges and discusses at some length the power of the Government of the Philippine

Islands to require plaintiff's vessel to carry mail without providing just compensation therefor. It would appear from the argument of counsel that licensed coastwise vessels were required under the former sovereign to carry mails without direct compensation, and that there is some contention as to whether they may be required to do so under the laws now in force; and it would seem that in many instances these vessels continued to carry the mails free of charge down to the date of the issuance of the circular, though nothing is said as to whether or not this was done voluntarily and without protest. If these intimations in the argument of counsel are founded in fact, a nice question of law might well be raised, unde appropriate pleadings, as to whether the government could continue to require such services, without direct compensation, where it does not appear that the required transportation of the mails imposes an inequitable burden in a particular instance; this as a condition of a continuance of the licenses under which coastwise trading vessels are required to operate, and in consideration of the indirect compensation received by such vessels through the above-mentioned expenditures on their behalf, or by way of services to be rendered in consideration of the privilege of entering and continuing in the business of common carriers, somewhat as licensed attorneys are required to render certain services without direct compensation in consideration of the privilege granted them to offer their services to the public in the practice of their profession.

We decline, however, to consider or decide this question in the absence of the necessary allegations setting forth that the defendant Collector of Customs has compelled and is threatening to compel the plaintiff master of the Vizcaya to carry mails free of charge. It does not appear from the pleadings, nor are we advised as a matter of fact, that any attempt has been made or is being made by the defendant Collector to compel the plaintiff master of the Vizcaya, over his protest, to carry mail without compensation. The allegations of the complaint disclose merely that he threatened to enforce the regulations of the circular requiring the master of the Vizcaya to make provision for the transportation of the mails when tendered, and for the giving of reasonable notice as to sailing hours upon which such tender might be based.

We come now to consider the authority of the Collector of Customs to issue and enforce general rules and regulations, such as are set forth in Customs Administrative Circular No. 627, subject to the approval of the Secretary of Finance and Justice.

Section 3 of Act No. 355 provides that the customs service shall embrace, among other things, the following:

"The documenting of vessels built or owned in the Philippine Islands, etc.

"The exclusion of foreign vessels from the coastwise trade.

"The entry and clearance of vessels.

"The enforcement of such regulation of commerce, foreign and coastwise, as shall be established by competent authority.

"The regulation of the carriage of passengers by water and the licensing of vessels therefor.

Section 7 of that Act, provides, in part, as follows: "The Insular Collector shall have general authority throughout the Philippine Islands in all matters embraced within the jurisdiction of the Customs Service."

Section 19 of that Act, provides, in part, as follows: "The Insular Collector shall, from time to time, make and promulgate general rules and regulations, not inconsistent with law, subject to the approval of the Secretary of Finance and Justice.:

"1, Directing the manner of execution of the customs law and laws relating to commerce, navigation, and immigration.

* * * * *

"7. Prescribing the method of loading and unloading merchandise and the transportation thereof by bonded carriers, railways, vessels, bonded lighters, carts, or otherwise."

* * * * *

Section 73 of that Act provides as follows: "In the coasting trade, the admeasurement, documenting, enrollment, and licensing of vessels built or owned in the Philippine Archipelago and in the making and recording of all documents relating thereto, the Insular Collector shall observe, promulgate, and enforce such orders and regulations respecting¹ the same as have been heretofore or shall hereafter be prescribed by the proper authority. In the absence of such regulations or orders he shall observe and follow the laws of the United States and the regulations of the Treasury Department of the United States so far as the same may be, in his sound judgment, applicable. Certificates of protection shall hereafter be signed by the collector of customs at ports where issued and countersigned by the Insular Collector."

Section 134 of Act No. 355 is as follows: "The coastwise trade shall be under the general control and supervision of the Insular Collector, and under the direct supervision of collectors of customs at the subports of entry within their respective collection districts."

Section 1 of Act No. 780, as amended by section 1 of Act No. 1602, provides, in part, as follows: "A board is hereby created, to consist of the Insular Collector of Customs, the supervising inspector of hulls and boilers, and assistant inspector of hulls, one person holding an unexpired license as master in the Philippine coastwise trade, and one other competent person, whose duty it shall be to examine and certify for licenses all applicants for licenses as watch officers and engineers upon vessels of the Philippine Islands,"

Section 2 of Act No. 780 is as follows: "Whenever any person applies for license as master, mate, patron, or engineer of a Philippine coastwise vessel it shall be the duty of the Board on Philippine Marine Examinations to make a thorough inquiry as to his character and carefully to examine the applicant, the evidence he presents in support of his application, and such other evidence as it may deem proper or desirable, and if satisfied that his capacity, experience, habits of life, and character are such as to warrant the belief that he can be safely intrusted with the duties and responsibilities of the position for which he makes application, ty shall so certify to the Insular Collector of Customs, who shall issue a license authorizing such applicant to act as master, mate, patron, or engineer, as the case may be."

Section 6 of that Act is as follows: "Every license authorized to be issued as above set forth shall be operative and in force until July first, nineteen hundred and four, but the Insular Collector of Customs may at any time suspend or revoke any license upon satisfactory proof of misconduct, intemperate habits, incapacity, or inattention to duty on the part of the licensee."

Section 2 of Act No. 1025 is as follows: "Upon the expiration of the license authorized to be issued by said Act Numbered Seven Hundred and eighty, the said Board is further authorized and empowered to renew such license from year to year upon due application being made as prescribed in said Act, but each renewal shall be operative for only one year. In case of renewal of license the written examination required by section three of said Act shall not be had, but the applicant for renewal shall only be required to submit to an examination, if deemed necessary by the Board, to test his physical soundness, but the Board is authorized to refuse any application for renewal upon satisfactory evidence of misconduct, intemperate habits, incapacity, or inattention to duty on the part of the licensee, and also to revoke any such renewal license, when granted, for the same reasons, or any of them."

Furthermore the duties of the captain of the port, as that office formerly existed and as provided in the Spanish laws, now devolve upon the Insular Collector of Customs and his subordinates as he may direct, pursuant to the provisions of section 1 of Act No. 625.

It follows that any duties which the captain of the port was required to perform under the above cited decrees and similar regulations issued under the Spanish Administration of the Government of these Islands, devolved upon the Collector of Customs at the date of the promulgation of Circular No. 627, so far as those decrees and similar regulations continued in force at that time.

We conclude from an examination of these citations of law, that in so far as Customs Administrative Circular No. 627 consists of a body of reasonable regulations controlling and prescribing the conduct of vessels licensed to engage in the coastwise trade, and of licensed officers aboard such vessels, with reference to the transportation of mail, the Insular Collector was clothed with the necessary authority at the date of the circular for its preparation, promulgation and enforcement. As we have already indicated, the circular (aside perhaps from its third paragraph, as to which no real contention is involved in these proceedings) is, when correctly construed, such a body of reasonable regulations, touching the conduct of coastwise vessels and their officers with reference to the transportation of mails. We have, therefore, no doubt as to the authority of the defendant collector in the premises.

Under the elementary rule by virtue of which a demurrer "searches the whole record," we are forced to the conclusion that, unless amended, the complaint must be dismissed, on the ground that no cause of action is developed by the pleadings.

Twenty days hereafter, let the complaint be dismissed at the costs of the petitioner unless amended so as to set forth a cause of action, and ten days thereafter let the record be filed in the archives of original actions in this court. So ordered.

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

Johnson, J., concurs in the result.

Complaint dismissed unless amended.

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