

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PASCUAL QUINAJON AND EUGENIO QUITORIANO, DEFENDANTS AND APPELLANTS.

G. R. No. 8686. July 30, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The defendants were charged with a violation of the provisions of Act No. 98. A complaint was presented in the court of the justice of the peace on the 11th day of November, 1912. A preliminary examination was had and the defendants were held for trial in the Court of First Instance of the Province of Ilocos Norte.

On the 17th day of November, 1912, the prosecuting attorney of the Province of Ilocos Norte presented the following complaint:

"The undersigned charges Pascual Qumajon and Eugenio Quitorian, residents of the municipality of Paoay, Ilocos Norte, P. I., with violating Act No. 98 of the Civil Commission, within the jurisdiction of this court, as follows:

"That the aforementioned accused are now and have been engaged for more than four years prior to this date in the transportation of passengers and merchandise in the port of Currimao—that is, in the loading and unloading of passengers and merchandise by means of virayes from the shore to the steamers that anchor in the said port, and vice versa.

"That the said accused have been regularly charging 6 centavos for the unloading and loading of each package of merchandise or cargo, large or small, heavy or light, off or on the steamers that anchor in the said port of Currimao, and that the unloading is understood to be from the steamer to the storage warehouses.

"That, in the months of June, July, and September, 1912, the said accused, by means of their virayes and employees, did unload in the port of Currimao aforementioned 5,986 sacks of rice belonging to the provincial government of Ilocos Norte, P. I., that had come from Manila, P. I., which sacks were unloaded from the steamers in which they had been shipped and were carried to the storage warehouses in which they were deposited; that the said accused did willfully, unlawfully, and criminally demand and collect from the provincial treasurer for the unloading of each one of the said sacks of rice 10 centavos, which amount was paid in the said port, instead of 6 centavos which, as set forth in the preceding paragraph, they have been regularly charging for such services in the unloading of the same kind of merchandise and under virtually the same circumstances and conditions; that the total sum of the payments so made by the provincial treasurer amounted to P598.60 for the aforesaid 5,986 sacks of rice, the provincial government of Ilocos Norte, P. I., being thereby damaged in the sum of P359.16, inasmuch as it should have paid only P239.44, in accordance with the said rate of 6 centavos for each package.

"Acts committed in violation of the said Act No. 98 of the Civil Commission."

Upon that complaint the defendants were duly arraigned, tried, found guilty of the crime charged, and sentenced

by the Honorable Dionisio Chanco, judge, to pay a fine of \$100 (P200) and costs, and to return to the provincial government of the Province of Ilocos Norte the sum of P359.16.

From that sentence each of the defendants appealed to this court. In this court they allege that the lower court committed the following errors:

"1. The court erred in holding that the accused had been regularly collecting 6 centavos for the loading or the unloading of each sack of rice from steamers in the port of Currimao.

"2. The court erred in holding that the defendants established preferential privileges and made discriminations in favor of certain shippers, against the provincial government of Ilocos Norte, in the loading or unloading of merchandise on to or from the steamers in the port of Currimao.

"3. The court erred, further, in sentencing the accused to pay to the provincial government of Ilocos Norte the sum of P359.16."

The first assignment of error presents a question of fact only. The appellants allege that the lower court committed an error in its conclusions of fact. They allege that the lower court committed an error in deciding that they had regularly charged 6 centavos for each sack of rice loaded or unloaded at the port of Currimao. The decision of the lower court contains the following statement of facts:

"It is proven that the defendants, acting as representatives of the Union Obrera, established at the port of Currimao, Ilocos Norte, and engaged by means of virayes as common carriers of passengers and in loading and unloading freight from steamers anchoring at said port, to the shore or to the warehouses, and vice versa, have regularly collected, during the last four years, 6 centavos for each sack of rice loaded or unloaded by said association.

"It is likewise proven that the same defendants, representing the same association, collected from the provincial government of Ilocos Norte 10 centavos for each of the 5,986 sacks of rice which they unloaded from the steamers during the months of June, July, and September, as property belonging to the said government, a price which differed from the usual charge of 6 centavos made to other shippers of said commodity.

"The provincial fiscal presented as witnesses in support of the information the Chinese merchants Cu Chatco, Cu Joco, Sy Yacco, Lim Anco, and Francisco Castro, who testified that they paid to the defendants for loading and unloading supplies from the steamers at Currimao 6 centavos for each package of any kind of supplies, large or small, heavy or light. The two first named, Cu Chatco and Cu Joco, testified, furthermore, that formerly they paid transportation charges for the loading and discharge of their supplies from the steamers according to the weight and size of each package, for which purpose a classification was previously made by weighing and measuring said packages or merchandise. Cu Joco does not remember how much was paid at that time for each package, but Cu Chatco states that 10 centavos was paid for the transportation of each sack of rice weighing 60 kilos or more. The two abovenamed witnesses, Cu Chatco and Cu Joco, add that as the task of weighing and measuring was very annoying to the Chinese merchants at Laoag, Ilocos Norte, they suggested to the defendants, and entered into an agreement with them, to pay by the lot the transportation charges covering supplies loaded onto or unloaded from the steamers, at the rate of 6 centavos for each package, heavy or light, large or small."

We have made a careful examination of the evidence adduced during the trial of the cause, and conclude that said facts are substantially sustained thereby. The evidence clearly shows that the defendant collected 6 centavos for each package, of whatever kind of merchandise, large or small, heavy or light, from those merchants only with whom they had a special contract. From other merchants, with whom they had not made said special contract, as well as the Province of Ilocos Norte, they collected a different rate.

The evidence shows that they collected from the Province of Ilocos Norte 10 centavos for each sack of rice which they unloaded from the steamers during the months of June, July, and September. There seems to be no reason for reversing or modifying the conclusions of the lower court based upon said finding of facts. The effect of collecting a different amount from different persons for exactly analogous or similar service performed by the defendants will be discussed when we come to a discussion of the law applicable to the foregoing facts.

The second assignment of error, to wit, that "the lower court committed an error in holding that the defendants established preferential privileges in favor of certain shippers," presents the question whether or not the defendants and appellants, in view of the foregoing facts, have violated the provisions of said Act No. 98.

The facts, as they are disclosed by the record and the findings of the lower court, may be stated concretely as follows: (1) The defendants, as common carriers, charged and collected from some shippers and merchants, a certain price for each package of merchandise, loaded or unloaded, according to a certain schedule. (See Exhibit A.) The prices fixed in the schedule depended upon the size and weight of the package. (2) The defendants entered into a special contract with certain merchants, under and by virtue of the terms of which they charged and collected, for loading and unloading merchandise in said port, the sum of 6 centavos for each package, without reference to its size or weight.

It is not contended that it cost any more to load or unload the rice for the province than it did for the merchants with whom the special contract was made. There is no proof that the conditions were different. There is no proof that the services rendered by the defendants for the different parties were unlike or even not contemporaneous.

The defendants justify their acts by the fact that they handled all the merchandise of some merchants, whether the packages were large or small, at the same price.

Under these facts, the question is squarely presented whether or not the defendants are guilty of a violation of the spirit or the letter of said Act No. 98. Said Act No. 98 was largely borrowed from the Act of Congress of February 4, 1887. The language of the two Acts, so far as they relate to the present case, is practically the same. Said Act of Congress has been construed by the Federal courts of the United States in several decisions. In view of the similarity of the two Acts, we feel justified in adopting the interpretation given by the Federal courts of the United States to said Act of Congress.

The similarity of Act No. 98 and the Act of Congress may be seen in the following quotations:

(Sec. 1, Act No. 98.)

(Sec. 2, Act of Congress, Feb. 4, 1887.)

"No person or corporation engaged as a common carrier of passengers or property shall directly or indirectly by any special rate, rebate, drawback or other device, demand, collect or receive from any person or person's a greater or less compensation for any service rendered, or to be rendered in the transportation of passengers or property on land or water between any points in the Philippine Islands than such common carriers charges, demands, collects or receives from any other person or persons for doing for him a like or contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, and any such unjust discrimination is hereby prohibited and declared to be unlawful."

"That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, draw back, or other device, charge, demand, collect, or receive from any person or persons a greater or less

compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

(Sec. 2, Act No. 98.)

(Sec. 3, Act of Congress, Feb. 4, 1887.)

"It shall be unlawful for any common carrier engaged in the transportation of passengers or property as above set forth to make or give any unnecessary or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular kind of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular kind of traffic, to any particular description of traffic, to any undue or unreasonable prejudice or is advantage in any respect whatsoever."

Said Act No. 98 is "An Act to regulate commerce in the Philippine Islands." Its purpose, so far as it is possible, is to compel common carriers to render to all persons exactly the same or analogous service for exactly the same price, to the end that there may be no unjust advantage or unreasonable discrimination. It applies to persons or corporations engaged as common carriers of passengers or property. A common carrier is a person or corporation whose regular business is to carry passengers or property for all persons who may choose to employ and remunerate him. A common carrier is a person or corporation who undertakes to carry goods or persons for hire. The appellants admit that they are common carriers. The only question presented is whether or not, under the facts, they have violated the Act regulating commerce in the Philippine Islands.

The law provides that no common carrier shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons, a greater or less compensation for any service rendered in the transportation of passengers or property, between points in the Philippine Islands, than he charges, demands, collects, or receives from any other person or persons, for doing a like or contemporaneous service, under substantially similar conditions or circumstances.

The law prohibits any common carrier from making or giving any unnecessary or unreasonable preference or advantage to any particular person, company, firm, corporation or locality/ or any particular kind of traffic, or to subject any particular person, company, firm, corporation, or locality, or any particular kind of traffic, to any undue or unreasonable prejudice or discrimination whatsoever. It will be noted that the law requires common

carriers to carry for all persons, either passengers or property, for exactly the same charge for a like or contemporaneous service in the transportation of like kind of traffic under substantially similar circumstances or conditions. The law prohibits common carriers from subjecting any person, etc., or locality, or any particular kind of traffic, to any undue or unreasonable prejudice or discrimination whatsoever. The law does not require that the same charge shall be made for the carrying of passengers or property, unless all the conditions are alike and contemporaneous. It is not believed that the law prohibits the charging of a different rate for the carrying of passengers or property when the actual cost of handling and transporting the same is different. It is not believed that the law intended to require common carriers to carry the same kind of merchandise, even at the same price, under different and unlike conditions and where the actual cost is different. The actual cost of handling and transporting the same quantity of rice, for example, might be different, depending upon the form of the package or other conditions. It would cost more to handle and transport rice packed in open boxes or baskets, for example, than it would to handle and transport the same quantity of rice neatly packed in sacks. It would cost more to handle and transport hemp, when it is unbaled and loose, than it would when it is baled. It might cost more to handle and transport household goods uncrated than when they are crated. It is not believed that the law prohibits the charging of a different price for handling and shipping merchandise when the shipper exercises greater care in preparing the same for shipment, thereby reducing the actual cost of handling and transporting. If the shipper puts his merchandise in a condition which costs less to handle and transport, he is certainly entitled to a better rate. The difference in the charge to different merchants or shippers must be based upon the actual cost of handling and transporting. The law does not require common carriers to perform different services for the same price, unless the actual cost is the same. It is when the price charged is for the purpose of favoring persons for localities or particular kinds of merchandise, that the law intervenes and prohibits. It is favoritism and discrimination which the law prohibits. The difference in charge must not be made to favor one merchant, or shipper, or locality, to the disadvantage of another merchant, or shipper, or locality. If the services are alike and contemporaneous, discrimination in the price charged is prohibited. For the purposes of the law, it is not sufficient always to say that merchandise is alike, simply because it is of a like kind or quantity. The quantity, kind, and quality may be exactly the same, and yet not be alike, so far as the cost of transportation is concerned. Examples have been given above. Many others might be given. A and B are each shippers of bananas between the same points. A delivers his bananas to the carrier in separate bundles or bunches, without a wrapper or any kind of protection, while B delivers exactly the same number of bunches of bananas, but they are neatly packed in a few boxes or baskets. It does not require much argument to convince men conversant with the shipping of merchandise, in such a case, that the actual cost of handling and shipping would be different and would, therefore, not be "alike," although contemporaneous, perhaps. Neither is it believed that shipments may be rendered unlike by the fact that the total shipment is composed of different kinds or classes of merchandise. For example, A is a shipper of rice and hemp and B is a shipper of rice alone. Both A and B prepare their rice for shipment in exactly the same form of package. It is not believed that the carrier is permitted, under the law, to carry A's rice for a less price than he carries B's rice, simply because A is also a shipper of hemp. A difference in the charge for handling and transporting may only be made when the difference is based upon actual cost. The actual cost may depend upon quantity. A man who ships freight by the carload, by reason of the actual cost of handling and shipping, may be entitled, under certain conditions, to a better rate than the man who ships a single article or package of the same class or kind of merchandise. A trainload of cattle might be shipped from Dagupan to Manila, for example, at less cost per head than it would cost to ship just a few head, less than a carload. The actual cost of each shipment must necessarily depend upon and be settled by its own proof. This rule, however, does not prohibit the making of general schedules, providing they are made applicable to all. The difference in the charge made by the common carrier cannot be made for the purpose of favoring any person or locality, to the prejudice or disadvantage of another person or locality. A common carrier may discriminate between shippers when the amount of goods

shipped by one actually costs less to handle and transport, but he cannot discriminate upon the ground simply that he carries all of the goods of one shipper, while he does not carry all of the goods of another. The difference in the charge must be the difference in the cost. It is competent for a common carrier under the law, we believe, to enter into special agreements for handling and transporting merchandise, whereby advantage may accrue to individuals, when it is made clearly to appear that by such agreements the common carrier has only its interests and the legitimate increase of its profits in view, and when the consideration given to the individual is for the interest of the common carrier alone, and when the common carrier gives all shippers exactly the same rate, under the same conditions.

The appellants justify the different charge upon the ground that they carried pianos and matches, for the merchants with whom they had the special contracts, at the same price. It is not believed that a merchant who happens to be a shipper of both pianos and matches, should have any advantage over the merchant who ships pianos alone, unless there is some other actual additional cost in the one case, which does not exist in the other. A common carrier can not discriminate upon the ground that he carries all of the goods of one shipper, while he does not of another.

In the present case there is no pretense that it actually cost more to handle the rice for the province than it did for the merchants with whom the special contracts were made. From the evidence it would seem that there was a clear discrimination made against the province. Discrimination is the thing which is specifically prohibited and punished under the law.

It is not believed that the law prohibits common carriers from making special rates for the handling and transporting of merchandise, when the same are made for the purpose of increasing their business, and to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits. It is not believed that the law requires absolute equality in all cases.

Circumstances and conditions may make it injurious to the carrier. Absolute equality, under certain circumstances and conditions, may give some shippers an advantage over others. It is only unjust, undue, and unreasonable discrimination which the law forbids. The law of equality is in force only where the services performed in the different cases are substantially the same, and the circumstances and conditions are similar. Many considerations may properly enter into the agreement for the carriage or shipment rate, such as the quantity carried, its nature, its risks, the expense of carriage at different periods of time, and the like. Numerous circumstances may intervene, which bear upon the cost and expense of transportation, and it is but just to the carrier that he be permitted to take these circumstances into consideration, in determining the rate or amount of his compensation. A question of fact is raised in each case for the courts to decide.

The foregoing conclusions are based upon literally hundreds of decisions of the courts of different states, and the Supreme Court of the United States, as well as those of England, which have interpreted statutes analogous to the one under consideration.

In the third assignment of error the appellants allege that the lower court committed an error in condemning them to pay or return to the provincial government the sum of P359.16. It is not exactly clear from the decision of the lower court just how he arrived at that conclusion. Section 5 of Act No. 98 provides that any person or corporation, who may be damaged by reason of the doing by a common carrier of any matters and things prohibited, shall be entitled to sue for and recover all damages so incurred, etc. It would seem that the defendants and appellants had a right to charge the provincial government 6 centavos for each sack of rice unloaded. They unloaded for the province 5,986 sacks, for which they charged the sum of P598.60. They had a right to collect 6 centavos, or the sum of P359.16. The appellants therefore collected from the province more than they had a right

to collect, the difference between P598.60 and P359.16, or P239.44. They should be required, therefore, to return to the province the excess which they collected, or the sum of P239.44. The judgment of the lower court, therefore, should be modified in this respect. The defendants are hereby ordered to return to the Province of Ilocos Norte the sum P239.44, for which sum a judgment is hereby ordered to be entered against them, for which execution may issue when this judgment becomes final, in case the same is not paid.

After a careful analysis of the facts, and the law applicable thereto, the judgment of the lower court, as herein modified, should be and is hereby affirmed with costs. So ordered.

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

Trent, J., dissents.

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