

TAN TE, PLAINTIFF AND APPELLANT, VS. J. FRANKLIN BELL ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 8866. March 28, 1914

Ponente: TRENT, J.

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TRENT, J.:

The short decision heretofore rendered in this case affirmed the judgment of the trial court.[1] This opinion is intended to set forth at some length our reasons for sustaining that judgment.

"AGREED STATEMENT OF FACTS.

"It is hereby agreed by and between the parties to the above-entitled action that:

"(1) The plaintiff, Tan Te, is of legal age and a resident of the city of Manila, Philippine Islands; he is a dealer in second-hand merchandise in said city; his place of business is located at 314 Calle Gandara, city of Manila, the same not being within any military reservation; he is not a soldier or officer of the United States.

"(2) The defendant J. Franklin Bell is the commanding general, Philippines Division, United States Army; the defendant W. S. Wood is a deputy quartermaster-general of the United States Army, with the rank of lieutenant-colonel ; the defendant James F. Dean is assistant to the adjutant general, Philippines Division, with the rank of major; the defendant Ulysses G. McAlexander is a major in the Thirteenth Infantry; at the time of commencing this action, all of the defendants were stationed in and residents of the city of Manila.

"(3) On the 21st day of May, 1912, the plaintiff was in possession of certain property of the value of P800 as follows : (Description of property set forth.)

" (4) On the 21st day of May, 1912, the said property was seized and taken by the defendants. It is now in possession of the depot quartermaster of the United States Army, city of Manila.

"(5) Said property was not taken for tax, assessment, or fine pursuant to a statute, or seized on execution or attachment against the property of the plaintiff, or in pursuance of any process of law or any civil court or civil authority of the Philippine Islands, but was seized and taken pursuant to the provisions of section 3748 of the Revised Statutes of the United States.

"(6) Of said property the following had not been furnished prior to such seizure by the United States to its soldiers in the United States Army: (Description of property follows.)

"Of said property the following had been furnished prior to such seizure by the United States to certain of its soldiers in the United States Army and thereafter, as effects of deceased soldiers, had been sold by the United States to the plaintiff: (Property described.)

" (7) Of said property the following, consisting of clothes and military outfits, had been furnished prior to such seizure by the United States to certain of its soldiers: (Description of property set forth.) Prior to such seizure, the United States had not within the Philippine Islands, by public sale, disposed of, or transferred any right, title, or interest in any clothing or outfits of the particular patterns, kinds, or standards of the articles last

mentioned. All of said articles last mentioned in this paragraph were, prior to said seizure, sold by certain of the soldiers of the United States Army or by third parties who had received said articles by purchase, barter, exchange, pledge, or by theft from soldiers of the United States Army, to the plaintiff.

"(8) Before the bringing of this action, the following agreement for attorneys' fees was made: P250 in cash was paid by the plaintiff to O'Brien & DeWitt, with agreement that at the close of this case in the Court of First Instance or Supreme Court of the Philippine Islands, whether they won it or lost it, he would pay P1,000. This agreement does not take into consideration the question of fees in the Supreme Court of the United States, should the case ever go that far."

The trial court, after finding that the property described in paragraph 6 of the above agreed statement of facts was seized by the defendants in good faith and in a mistaken belief that it was of the same character as that described in paragraph 7, adjudged "that plaintiff have and recover from defendants the said property described in paragraph 6 of the stipulation, together with his costs, but that he recover none of the property described in paragraph 7 of said stipulation." Plaintiff appealed.

Counsel for the appellees says: "It is, however, submitted that if the court see by the complaint, the answer, and the evidence that this is in reality a suit against the United States without its consent, it should, of its own motion, take notice of this fact and dismiss the case for lack of jurisdiction."

Upon this point we think it sufficient to say that it is alleged in the complaint that the "defendants illegally, wrongfully, and by force, and without any due process of law whatsoever, took from the plaintiff" the property in question, and "that said property is wrongfully detained by the defendants." In *Tindal vs. Wesley* (167 U. S., 204), the court, after reviewing many of its decisions, said: "But the eleventh amendment gives no immunity to officers or agents of a State in withholding the property of a citizen without authority of law. And when such officers or agents assert that they are in rightful possession, they must make good that assertion when it is made to appear in a suit against them as individuals that the legal title and right of possession is in the plaintiff."

The present case is so clearly within the principles affirmed and the cases reviewed in that opinion that we deem it unnecessary to discuss this point further.

Counsel for the appellant insist that the trial court erred (a) in holding that the provisions of section 3748 of the Revised Statutes of the United States are in force in this jurisdiction and (b) in failing to render judgment in favor of the plaintiff for the return of the property described in paragraph 7 of the above stipulation; and for the sum of P1,250, being the amount of counsel fees and compensatory damages.

Sections 3748 and 1891 of the Revised Statutes of the United States and the pertinent part of section 1 of the Organic Act of the Philippine Islands (Act of July 1, 1902) read:

"The clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person not a soldier, or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits, or accouterments, so furnished, and which have been the subject of any such sale, barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein; but the same may be seized and taken by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster, or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accouterments, by any person not a soldier or officer of the United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift." (Sec. 3748.)

"The Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States." (Sec. 1891.)

"The provisions of section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands." (Sec. 1.)

As to the appellant's rights in this case, counsel also rely upon the following provisions of section 5 of the Act of Congress of July 1, 1902:

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

"That the right to be secure against unreasonable searches and seizures shall not be violated."

"That no warrant shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person or things to be seized."

Section 334 of the Code of Civil Procedure reads:

"The following presumptions are satisfactory, if uncontradicted, but they are disputable, and may be contradicted by other evidence:"

" (7) That a thing delivered by one to another belonged to the latter;"

" (10) That things which a person possesses are owned by him;

" (11) That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership."

CIVIL CODE.

"Art. 348. Ownership is the right to enjoy and dispose of a thing, without further limitations than those established by law.

"The owner has a right of action against the holder and the possessor of a thing to recover the same.

"Art. 349. No one shall be deprived of his property, except by competent authority and with sufficient cause of public utility, always after the proper indemnity.

"If this requisite has not been fulfilled the judges shall protect, and in a proper case, replace the party so deprived in possession."

"Art. 434. Good faith is always presumed, and any person alleging bad faith on the part of the possessor is obliged to prove it."

"Art. 441. In no case can possession be forcibly acquired while there is a possessor opposing it. A person believing that he has an action or right to deprive another of the holding of a thing must request the assistance of the competent authority whenever the holder refuses the delivery."

"Art. 446. Every person has a right to be respected in his possession; and should he be disturbed therein, he must be protected or possession must be restored to him by the means established in the laws of procedure."

Before entering upon a discussion of the main question (i. e., whether section 3748, supra, is in force and effect in the Philippine Islands), it might be well to inquire into the purpose of the seizure and the title to the property now in question.

One of the greatest difficulties with which officers of the Army have to contend in times of peace is the unlawful disposal by enlisted men of the Army of their uniform clothing. This is especially true where troops are stationed in the vicinity of large cities. As indicating the views of the military authorities with reference to this pernicious

practice, so hurtful to discipline, it may be remarked that the President of the United States, at their suggestion, in his Executive Order of November 25, 1908, fixing the limits of punishment of enlisted men in certain cases, issued in pursuance of the Act of Congress of September 27, 1890, increased the limit of punishment for selling clothing from three months' confinement at hard labor and forfeiture of \$10 per month for the same period, to dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for one year. Even with this severe penalty, there has been no appreciable reduction in the number of these offenses in the Philippine Islands. The Commanding General of the Philippine Division in his report, dated August 12, 1912, remarked that "a certain percentage—15 per cent—of the cases tried by the general court-martial in this division during the year involved the selling or other unlawful disposition of clothing."

The real purpose of the procedure followed in this seizure was to break up this practice of purchasing clothing from soldiers, which had been issued to them by the United States for military purposes. It was believed that civil actions in the courts pursuant to search warrants and regular procedure had failed to remedy the situation. The military authorities claim in this case that they proceeded in accordance with the express provisions of section 3748, *supra*, which they insist not only grants authority, but goes further and makes mere possession of such military outfits by any person not a soldier or officer of the United States Army evidence of an unlawful sale, etc.

The laws governing the United States Army being either Federal Statutes or regulations promulgated pursuant to Federal Statutes, the decisions of the Federal courts can properly be followed. These courts have held that the title to clothing issued by the United States to soldiers remains in the United States. In the case of the United States vs. Hart (146 Fed., 202), the court said: "These sections of the Revised Statutes indicate that the title to clothing issued to soldiers remains in the United States; therefore, I hold that in this case the articles of clothing which were issued to the soldiers at Fort Sheridan while they were employed in the military service of the United States were public property, under section 5438. Motion to take from the jury overruled."

Lacombe, circuit judge, in the late case of Lobosco vs. United States (183 Fed., 742), following the Hart case, in part said: "It seems entirely clear from these sections that in supplying the recruit with an equipment suitable and necessary for the discharge of his military duties the Government has been very careful to retain title to the same. It would seem to be public property, whether it remains in depot or is put in the possession of the individual soldier. The circumstance that, when his term expires, he is allowed to retain such articles of clothing as he has then in use, does not change the character of his holding while he is in the service of the Government. Three points are presented in appellant's brief. * * * It is assigned as error that the court did not dismiss the indictment on the ground that the goods purchased were not a part of the equipment of the marines, because they were furnished to them under their clothing allowance. There are two conflicting decisions, both in district courts, as to the status of articles issued to the soldier or sailor under his clothing allowance, viz, U. S. vs. Michael (153 Fed., 609), and U. S. vs. Hart (146 Fed., 202). We concur in the conclusion in the Hart, case, for reasons which are sufficiently set forth in the earlier part of this opinion."

In the still later case of Ontai vs. United States (188 Fed., 310), decided on July 3, 1911, Gilbert, circuit judge, said:

"Error is assigned to the refusal of the court to instruct the jury to acquit the plaintiff in error on the ground that the property which he purchased of the soldier had been allowed to the latter under a clothing allowance, whereby it became his individual property, held by him subject only to his contract with the United States not to dispose of the same, but with a tenure which permitted another to purchase the same without incurring any penalty for violation of the statute, and it is consented that the indictment having charged the purchase of public property of the United States, and the proof having shown that the purchase was an article of clothing which had been allowed to a soldier, the variance between the indictment and proof was fatal. * * * It is true that one of the promises held out to the soldier about to enlist is the payment to him of a certain sum of money,

and the allowance to him of certain specified clothing. But the clothing which he receives is held by a different tenure from the money. The latter is the soldier's to spend at his will. The clothing is part of his equipment for services which he is to render to the United States. He gets no property right in it other than the right to wear it. It is as much a portion of his equipment as is his gun or his ammunition. It remains public property of the United States."

The Judge-Advocate-General on May 12, 1910, reviewing previous opinions on this subject, reached an identical conclusion. The Attorney-General of the Philippine Islands on June 30, 1910, in an opinion to the Governor-General held definitely that "clothing issued to soldiers is the property of the United States."

The above quoted provision of section 1 of the Act of July 1, 1902, makes inapplicable to these Islands section 1891, *supra*. Section 1891 was embodied *ipsisimis verbis* in practically all the organic acts of territories organized prior to its enactment. Its effect was to extend to such territories those constitutional restrictions upon the territorial governments and those strictly personal rights and privileges enjoyed by the citizens of the several States. It furthermore extended to those territories the laws of the United States relating to public lands, customs, internal revenue, mining, and the laws relating to interstate commerce and navigation. To enumerate all the constitutional provisions and laws of the United States that were thus extended and made applicable to the territories affected by this section would be of but little further assistance in the disposition of this case. It is sufficient for our purposes to show its general and more important effects. Notwithstanding the fact that, as stated in *Clinton vs. Englebrecht* (13 Wall., 434) "In all the territories full power was given to the legislature over all ordinary subjects of legislation," the constitutional provisions and laws of the United States, recognized as having uniform operation throughout the several States, were extended to these territories. Situated as these territories were in the western part of the North American continent, physically united to the union of the States, their civilized population coming for the most part from that union and bringing with them those notions of government and social customs which made that union possible, and destined ultimately to form component units therein, nothing was more practicable, equal in statesmanship, or less disturbing to the existing condition of affairs than to confer upon these territories from the inception of their existence as such the Constitution and general laws of the United States. At the time (1874) section 1891 was enacted, there remained as unorganized territory of the United States what are now known as Oklahoma, the Indian Territory, and the territory of Alaska. By the terms of the treaty with Russia the civilized inhabitants of Alaska, who did not desire to retain their Russian citizenship by returning to that country, were admitted "to the enjoyment of the rights, advantages and immunities of the citizens of the United States" (15 Stat at L., 542). And a year later the laws of the United States relating to customs, commerce, and navigation were extended to that territory. Laws passed prior to 1874 had practically committed Congress to the same policy with regard to those unorganized territories as it had adopted toward the territories therefore organized west of the Mississippi. At that time (1874) the events of a quarter of a century later which brought Hawaii, Porto Rico, and the Philippines under the sovereignty of the United States were not even within the realm of conjecture. In enacting that blanket provision (section 1891), what was more natural than that the clause extending the Constitution and laws of the United States, locally applicable, to territories to be organized in the future, should have been inserted in section Under existing facts at that time such a clause was as appropriate as the one stating that the Constitution and laws of the United States applied to territories already organized.

With the acquirement of the Philippine Islands a most important change in the territorial policy became necessary. The United States found here a monarchical form of government. The municipal law was, for the most part, that of Latin Europe. The "habits, traditions, and modes of life" of the people were entirely dissimilar to those of continental America.

In the judgment of Congress it was thought necessary to establish a representative form of government in the

Philippines. Those provisions of the Constitution deemed "indispensable requisites" to the maintenance of such a government were incorporated in the Organic Act. But others, notably the jury system, were neither indispensable to the establishment of such a government (*The Insular Cases*, 182 U. S., 1, and *Dorr vs. United States*, 195 U. S., 138, 49 L. ed., 128), nor were they considered appropriate to the existing conditions, and were consequently not included. A general and unqualified extension of the Constitution and laws of the United States to these Islands was considered impracticable and tending unnecessarily to disturb the existing order of things.

For reasons which it is unnecessary to set forth in this opinion, Congress did not desire that the Philippine Islands should be admitted into the customs union; that the inhabitants of the Philippine Islands should be given the status of citizens of the United States; or that the public land laws, the laws relating to mining, customs, navigation, and other similar laws, should be extended to these Islands in their entirety and without modification. The inevitable result of an extension of the Constitution and laws of the United States to the Philippine Islands would have been to give them and their inhabitants the same status as the mainland territories. Such a scheme was objectionable, not only for political reasons, but because of the existing social and economic conditions. Therefore, section 1891 of the Revised Statutes was declared inapplicable to this country

But because that section is inapplicable, does it necessarily follow that no provision of the Constitution nor any law of Congress has force and effect in the Philippines unless expressly extended and made applicable to them by Congress? Upon the answer to this question depends in a great measure the correct disposition of this case. Does the withholding of a blanket extension of the Constitution and laws of the United States, coupled with a specific extension of certain portions of the Constitution and the laws of the United States, call for the application of the maxim, *expressio unius est exclusio alterius*, to this case?

This case does not bring into question the extension to the Philippines of any provision of the Constitution. In this particular it deals entirely with two, or possibly three, laws enacted by the same legislature and having, therefore, equal intrinsic dignity and effect. If any one of them supersedes any of the others, it does so not by reason of the higher source from which it emanates, but simply because it is a later expression of the legislative will. While, as to the Legislature of the Philippine Islands, the Act of July 1, 1902, and other Acts of Congress applicable to these Islands have the qualities and characteristics of a constitution, these laws, considered in relation to other laws enacted by Congress, are exactly on the same level. In determining whether any one of them impliedly repeals another, the intention of Congress must be kept constantly in view.

It is true that only those laws of the United States specifically extended to these Islands by Congress have force and effect here? That the Articles of War, which are embodied in an Act of Congress, have force and effect in this country even in times of peace, was settled by the Supreme Court of the United States in the case of *Grafton vs. United States* (206 U. S., 333). Yet these Articles of War have never been specifically extended to the Philippines by Act of Congress.

There are in these Islands a considerable number of persons employed in the Federal civil service. Must their duties be performed and their conduct be such as is prescribed in Act No. 1698 of the Philippine Commission, and the rules and regulations promulgated thereunder by the Director of Civil Service of the Insular Government? Or must these persons look to the Federal civil-service law and the regulations prescribed therein by the Federal authorities for an enumeration of their rights and obligations?

But the question becomes easier of solution if we look upon the Government of the Philippine Islands in its true light as "owing its existence wholly to the United States," whose authority may be extended, modified, or revoked by Congress. Suppose that Congress appoints an agent to do certain specific things, as, for example, a commission to obtain certain information or data of national importance, and that Congress endows this commission with

certain powers. Will it be asserted that any of the powers of such a commission, which Congress has the constitutional authority to delegate to it, could be subordinated to the regulations of the several legislatures created by Congress in the various territories, or to the laws of any of the State legislatures through whose jurisdictions the commission journeys in the performance of its duties? Must it, for instance, observe the laws of any particular State in summoning witnesses to testify before it while operating in that State and so on through the various States and Territories, notwithstanding the fact that Congress has prescribed a procedure for that purpose in the law creating it? The mere statement of the proposition is its own refutation.

The various States of the Union have surrendered certain attributes of sovereignty to the United States. As to those matters the Government of the United States is supreme. No State can pass any law or take any action in such matters contravening any law of Congress. Laws of Congress which keep within constitutional limits are supreme in every State of the Union. At the same time it is well settled that each of the States has retained for itself other important functions of government which the Federal Government cannot usurp. The territorial governments, however, are mere creatures of Congress. They are subject in every particular to the will of Congress. Congress has recently asserted its right to legislate for the Territories unhampered by many important restrictions upon its powers as affecting the sovereign States of the Union. Its authority so to do has been confirmed by the Supreme Court of the United States in unequivocal language in the *Insular Cases* and in *Dorr vs. U. S.*, *supra*. If the various States of the Union may not oppose by legislation, or otherwise, the duly constituted agents of the United States in the performance of their duties, much less may the territorial governments do so.

"It can act only through its officers and agents, and they must act within the States. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offense against the law of the State, yet warranted by the Federal authority they possess, and if the general Government is powerless to interfere at once for their protection, their protection must be left, to the action of the State court, the operations of the general Government may at any time be arrested at the will of one of its members. The legislation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the national Government, and in obedience to its laws. It may deny the authority conferred by those laws. The State court may administer not only the laws of the State, but equally Federal law, in such a manner as to paralyze the operations of the Government. And even if, after trial and final judgment in the State court, the case can be brought into the United States court for review, the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged Federal power arrested. We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it." (*Cunningham vs. Neagle*, 135 U. S., 1; 34 L. ed., 55.)

And in *In re Thomas* (82 Fed., 304, 309), Judge Taft said:

"It is entirely immaterial in what place, within the jurisdiction of the Government of the United States, the duty is discharged. State lines cannot affect or modify the complete control which the Federal Government and its agents and officers duly authorized have over the manner of discharging it. The jurisdiction of the State government in such a case is excluded not because of the place where the act is done, but because that which is being done is the business of the United States, and such business is as completely beyond the influence and control of the State government as if it were not done within the territory of the State."

By the Constitution of the United States, Congress is given power by taxation to provide for the common defense and general welfare of the United States. It is given power to declare war, to raise and support armies, to provide

and maintain a navy, to make rules for the government and regulation of the land and naval forces, to suppress insurrections and repel invasions, and to make all laws which shall be necessary and proper for carrying into execution these powers. The army, established in pursuance of such power, is not representative of any particular State or section of the country. It is an agency of the Federal Government. No State or Territory may interfere in its internal management nor take from it any of its authority. Admitting, which we all must, that the right to act under section 3748, supra, is available to an officer of the United States stationed in one of the sovereign States, by what process of reasoning is he to be shorn of such power in the Philippine Islands? Is it because such a seizure as the one under consideration is not in accordance with the provisions of the above-quoted sections of the local laws? Such is the contention of counsel for the plaintiff. Is it because section 3748 does not apply to the Philippines? If this be true, then its corollary is that the Army of the United States comes to this country shorn of some of its power by the will of Congress. We may even go further, and question the operation in these Islands of any and every Federal law relating to the Army not specifically extended to this country.

To us the question seems to resolve itself into one of intent. What was the intention of Congress in enacting section 1891 of the Revised Statutes? in withholding its application to the Philippine Islands? and in enacting section 3748? We have endeavored to show that the effect of extending section 1891 to the Philippines would have been to give them the status of the mainland Territories which, for political, social, and economic reasons was not desired. This was all that was intended or desired by Congress in inserting' that proviso in section 1 of the Act of 1902. Congress did not intend that the Army, liable to the call of duty in this country on the same business it performed in other parts of United States territory, should, by the provisions of section 1 of the Act of 1902, be deprived of any of its general powers, or hampered or restricted in the due performance of its duties, by the local laws.

It was under its constitutional power "to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States" that Congress enacted section 3748. As said by Mr. Justice Field in *Wisconsin Central R. Co. vs. Price County* (133 U.S., 496, 514; 33 L. ed., 687): "This implies an exclusion of all other authority over the property which could interfere with this right or disturb its exercise." The importance of the question under consideration to the Army is manifest.

While this suit is for the purpose of recovering certain uniform clothing now in the possession of the military authorities as the result of seizure under section 3748, it must be borne in mind that precisely the same situation may arise at any time in relation to arms unlawfully withheld from the Federal Government. The obvious intent of the framers of section 3748 was to provide a swift, sure, and summary method of action, for without that the very purpose of the law would be defeated. This statute was enacted during¹ the Civil War to meet a great pressing emergency, and the fact that it remains to-day unrepealed indicates that the necessity for its existence in time of peace, as well as in time of war, is thoroughly recognized. It is, in our opinion, going too far to hold that a law so essential to the discipline, well-being, and protection of the Army is of no effect in this great outlying territory of the United States. To so hold would imperil the very existence of the Army. The Army, especially, is an agent of the United States Government whose field of duty is nationwide. The need for its services may arise in any section of the country. It is inconceivable that Congress in enacting laws for its proper regulation and maintenance, and in conferring powers upon its officers not specifically limited to some certain territory, intended to curtail its effectiveness or weaken its authority by subsequent legislation conferring a government upon a territory having the status of the Philippine Islands.

Again, an army is a necessity under every system of government, and no civilized state in modern times has been able to dispense with one. The Government of the Philippine Islands has never been empowered to raise an army. The United States Government sent its own army to this country and, surely, it cannot be said that that sovereign's

army comes to this country shorn of some of the power which the laws of the sovereign confer upon it as a part of the executive branch of the national Government.

From the argument on the scope of the first paragraph of section 5 of the Act of July 1, 1902, above quoted, it appears that counsel for the appellant are of the opinion that "due process of law" is necessarily judicial proceedings. We do not think so.

" 'Due process of law,' or 'the law of the land' (which means the same thing), is not necessarily judicial proceedings: Private rights and the enjoyment of property may be interfered with by the legislative or executive, as well as the judicial, department of the Government. When it is declared that a person shall not be deprived of his property without 'due process of law,' it means such an exercise of the powers of government as [the settled maxims of law permit and sanction, under such safeguards as] these maxims prescribe for the class of cases to which the one in question belongs. (Cooley, Const. Lim., 356.) This constitutional guaranty, which is as old as Magna Charta, as it is found in this or an equivalent form in every American constitution, is intended to secure the citizen from the arbitrary exercise of the powers of government, unrestrained by the established principles of right and distributive justice." (State of Minnesota, ex rel Edward D. Chapman vs. State Board of Medical Examiners, 34 Minn., 387, and cases cited.)

The procedure followed by the defendants constituted under the provisions of section 3748 "due process of law" and, therefore, the search and seizure were not "unreasonable" and a "warrant" was not necessary to justify their action. In considering the foregoing provisions of the Code of Civil Procedure and the Civil Code it must be borne in mind that section 3748 of the Revised Statutes of the United States is the "supreme law of the land" on this subject, and that the plaintiff had no "right, title, or interest" in the property now in question.

Having held that the seizure of those articles which had been issued originally by the United States Army to its soldiers, acquired by the plaintiff through other parties than the United States Government, was unlawful, it is at once apparent that the plaintiff can claim no damages for such seizure unless there was a wanton abuse or excess of authority in making the seizure. None such is claimed. As to those articles, the plaintiff was holding them unlawfully and cannot be heard to complain if his business was disturbed, in so far as there may have been a reasonable necessity therefor during the process of seizure. From the evidence of record there is no substantial ground for concluding that the search for and seizure of those articles was not conducted in the manner least calculated to disturb the plaintiff's business, consistent with the object to be attained.

As to those articles seized which were admitted by the defendants not to belong to the United States Government, even though we were disposed to award damages for such wrongful seizure, there appears to be no trustworthy basis upon which they could be allowed. In two recent cases we discussed the question of the allowance of damages to an established business, and there stated that satisfactory evidence of the amount of business transacted before and after the injury complained of must be submitted, as a general rule, in all such cases, before damages can be awarded. (Tan Ti vs. Alvear, 26 Phil. Rep., 566; Algarra vs. Sandejas, p. 284, ante.) No such evidence was submitted in the case at bar. Furthermore, were such evidence before us, it would be necessary to determine what portion thereof was occasioned by the seizure which was lawful, as distinguished from the damages caused by the seizure which subsequently proved to be unlawful. In some jurisdictions this might be a case for the award of at least nominal damages for the articles wrongfully seized. But merely nominal damages are never considered in this jurisdiction. (Algarra vs. Sandejas, supra.) Under all the circumstances of this case and after a careful examination of the evidence before us, we are of the opinion that no adequate and reliable basis for the assessment of damages is available. Fees of plaintiff's attorney in recovering his property cannot be considered as an element of damages in this jurisdiction. (Tan Ti vs. Alvear, supra.)

Arellano, C. J., and Araullo, J., concur.

[1] March 28, 1914.

CONCURRING

CARSON, J.

I concurred in the disposition of this case in the "short opinion" and did so on grounds substantially similar to those set forth in the foregoing extended opinion prepared by Justice Trent. I reserve my opinion, however, as to some of the propositions advanced in that opinion which I do not deem essential to the argument in support of the judgment heretofore entered in pursuance of the disposing part of the "short opinion."

DISSENTING

MORELAND, J.

I dissent.

It is a fact undisputed by the parties that a file of soldiers under the orders of the defendants forcibly entered plaintiff's store, without process of any court authorizing them to do so, substantially took possession thereof and its contents, and, by force and against the will and in spite of the protests of the plaintiff, removed therefrom the articles which are the subject matter of this litigation. The only defense is that such a procedure is authorized by section 3748 of the Revised Statutes of the United States.

I do not believe that that section is in force in the Philippine Islands. There has been no Act of Congress making it effective here. It is in derogation of the natural and legal rights of citizens, is, in effect, a bit of martial law injected into a government of civil law, and its sphere of operation should not be extended by implication. The laws of the Philippine Islands are sufficient to protect the United States in its property and property rights, and laws of the character of the section referred to should not be made applicable in this jurisdiction without clear direction of the legislative will.

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