

MARCOS MENDOZA, PLAINTIFF AND APPELLEE, VS. FRANCISCO DE LEON ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 9596. February 15, 1916*

Ponente: TRENT, J.

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This is an action for damages against the individual members of the municipal council of the municipality of Villasis, Pangasinan, for the revocation of the lease of an exclusive ferry privilege duly awarded to the plaintiff under the provisions of Act No. 1634 of the Philippine Commission. After user of a little more than one year, the plaintiff was forcibly ejected under and in pursuance of a resolution adopted by the herein defendants, awarding a franchise for the same ferry to another person.

Municipalities of the Philippine Islands organized under the Municipal Code have both governmental and corporate or business functions. Of the first class are the adoption of regulations against fire and disease, preservation of the public peace, maintenance of municipal prisons, establishment of primary schools and post-offices, etc. Of the latter class are the establishment of municipal waterworks for the use of the inhabitants, the construction and maintenance of municipal slaughterhouses, markets, stables, bathing establishments, wharves, ferries, and fisheries. Act No. 1634 provides that the use of each fishery, fish-breeding ground, ferry, stable, market, and slaughterhouse belonging to any municipality or township shall be let to the highest bidder annually or for such longer period not exceeding five years as may have been previously approved by the provincial board of the province in which the municipality or township is located.

The twofold character of the powers of a municipality under our Municipal Code (Act No. 82) is so apparent and its private or corporate powers so numerous and important that we find no difficulty in reaching the conclusion that the general principles governing the liability of such entities to private individuals as enunciated in the United States are applicable to it. The distinction between governmental powers on the one hand, and corporate or proprietary or business powers on the other, as the latter class is variously described in the reported cases, has been long recognized in the United States and there is no dissent from the doctrine.

In *Wilcox vs. City of Rochester* (190 N. Y., 137), it was said:

"The broad general doctrine of the *Maxmilian* case (*Maxmilian vs. Mayor, etc.*, New York, 62 N. Y., 160), which is certainly not now open to question in the courts of this State, is that 'two kinds of duties are imposed on municipal corporations, the one governmental and a branch of the general administration of the state, the other quasi private or corporate;' and 'that in the exercise of the latter duties the municipality is liable for the acts of its officers and agents, while in the former it is not.' (*Cullen, J., in Lefrois vs. Co. of Monroe*, 162 N. Y., 563, 567.)"

The *Maxmilian* case is quoted with approval in *Bond vs. Royston* (130 Ga., 646).

In *Co. Comm's of Anne Arundel Co. vs. Duckett* (20 Md., 468, 476; 83 Am. Dec., 557), it was said:

"With regard to the liability of a public municipal corporation for the acts of its officers, the distinction is between an exercise of those legislative powers which it holds for public purposes, and as part of the government of the country, and those private franchises which belong to it, as a creation of the law; within the sphere of the former, it enjoys the exemption of the government, from responsibility for its own acts, and for the acts of those who are independent corporate officers, deriving their rights and duties from the sovereign power. But in regard to the latter, it is responsible for the acts of those who are in law its agents, though they may not be appointed by itself."

This case was quoted with approval in *Trammell vs. Russellville* (34 Ark., 105; 36 Am. Rep., 1); and in *McIlhenney vs. Wilmington* (127 N. C., 146; 50 L. R. A., 470).

In *Cummings vs. Lobsitz* (42 Okla., 704; L. R. A., N. S., B, p. 415), it was said:

"A distinction is made between the liability of a municipal corporation for the acts of its officers in the exercise of powers which it possesses for public purpose and which it holds as agent of the state, and those powers which embrace private or corporate duties and are exercised for the advantage of the municipality and its inhabitants. When the acts of its officers come within the powers which it has as agent of the state, it is exempt from liability for its own acts and the acts of its officers; if the acts of the officer or agent of the city are for the special benefit of the corporation in its private or corporate interest, such officer is deemed the agent or servant of the city, but where the act is not in relation to a private or corporate interest of the municipality, but for the benefit of the public at large, such acts by the agents and servants are deemed to be acts by public or state officers, and for the public benefit."

The distinction is also recognized by Dillon in his work on *Municipal Corporations* (5th ed.) sections 38 and 39.

As is indicated in some of the above quoted cases, the municipality is not liable for the acts of its officers or agents in the performance of its governmental functions. Governmental affairs do not lose their governmental character by being delegated to the municipal governments. Nor does the fact that such duties are performed by officers of the municipality which, for convenience, the state allows the municipality to select, change their character. To preserve the peace, protect the morals and health of the community and so on is to administer government, whether it be done by the central government itself or is shifted to a local organization. And the state being immune for injuries suffered by private individuals in the administration of strictly governmental functions, like immunity is enjoyed by the municipality in the performance of the same duties, unless it is expressly made liable by statute.

"The state cannot, without its consent expressed through legislation, be sued for injuries resulting from an act done in the exercise of its lawful governmental powers and pertaining to the administration of government. * *

* Municipal corporations are agents of the state in the exercise of certain governmental powers. The preservation of the health and peace of its inhabitants and fire protection afforded the property owner, are governmental functions." (*Burke vs. City of South Omaha*, 79 Neb., 793.)

In *Nicholson vs. Detroit* (129 Mich., 246; 56 L. R. A., 601), it was said:

"It is the well-settled rule that the state is not liable to private persons who suffer injuries through the negligence of its officers—and the rule extends to townships and cities—while in the performance of state functions, imposed upon them by law. This subject is fully discussed in *Detroit vs. Blackeby* (21 Mich., 84; 4 Am. Rep., 450). It was there held that cities are governmental agencies, and that their 'officers are in no such sense municipal agents; that their negligence is the neglect of the municipality; nor will their misconduct be chargeable against them, unless the act complained of be either authorized or ratified.' And in a large number of cases it has been held that there is no such liability on the part of such governmental agency unless it has been imposed by statute, and in such case it is necessarily limited by the statute."

In *Claussen vs. City of Luverne* (103 Minn., 491; 15 L. R. A., N. S., 698), it was said:

"It is elementary that neither the state nor any of the subdivisions, like a municipality, through which it operates, is liable for torts committed by public officers, save in definitely excepted classes of cases. The exemption is based upon the sovereign character of the state and its agencies, and upon the absence of obligation, and not on the ground that no means for remedy have been provided. 'The government,' said Mr. Justice Story, 'does not undertake to guarantee to any person the fidelity of the officers or agents whom it employs, since that would involve it in all its operations in endless embarrassments, difficulties and losses, which would be subversive of the public interest.' (U. S. vs. Kirkpatrick, 9 Wheat., 720; 6 L. ed., 199; *Beers vs. Arkansas*, 20 How., 527; 15 L. ed., 991.) This general exemption has been applied to municipal corporations in so far as the acts complained of were, in the language of the memorandum of the trial court, 'done in exercising powers for the public at large as a governing agency.' While so acting, the city cannot be held liable for misfeasance; and * * * the rule of respondeat superior has no application."

Nor are officers or agents of the Government charged with the performance of governmental duties which are in their nature legislative, or quasi judicial, liable for the consequences of their official acts, unless it be shown that they act willfully and maliciously, and with the express purpose of inflicting injury upon the plaintiff. If they exercise their honest judgment in the performance of their duties, their errors cannot be charged against them. (*People vs. May*, 251 111., 54; *Salt Lake County vs. Clinton* [Utah, 1911], 117 Pac., 1075; *Comanche County vs. Burks* (Tex. Civ. App., 1914), 166 S. W., 470; *Monnier vs. Godbold*, 116 La., 165; 5 L. R. A., N. S., 463; *Ray vs. Dodd*, 132 Mo. App., 444; *Johnson vs. Marsh*, 82 N. J. L., 4; *Gregory vs. Brooks*, 37 Conn., 365; *Lecourt vs. Gaster*, 50 La. Ann., 521.) So it may be said that in so far as its governmental functions are concerned, a municipality is not liable at all, unless expressly made so by statute; nor are its officers, so long as they perform their duties honestly and in good faith. The most common illustration of both phases of this rule is the action for false imprisonment so often brought either against a municipality or a municipal police officer. (*Bartlett vs. City of Columbus*, 101 Ga., 300; 44 L. R. A., 795; *Peters vs. City of Lindsborg*, 40 Kan., 654.) So, in *Field vs. City of Des Moines* (39 Iowa, 575), it was held that a municipality, acting under authority given it by the central government to destroy houses in the path of a conflagration, was not liable in damages in the absence of a statute expressly making it so.

From what has already been said, it should be clear that a municipality is not exempt from liability for the negligent performance of its corporate or proprietary or business functions. In the administration of its patrimonial property, it is to be regarded as a private corporation or individual so far as its liability to third persons on contract or in tort is concerned. Its contracts, validly entered into, may be enforced and damages may be collected from it for the torts of its officers or agents within the scope of their employment in precisely the same manner and to the same extent as those of private corporations or individuals. As to such matters the principles of respondeat superior apply. It is for these purposes that the municipality is made liable to suits in the courts.

"Municipal corporations are subject to be sued upon contracts and in tort. In a previous chapter we have considered at length the authority of such corporations to make contracts, the mode of exercising, and the effect of transcending the power. This leaves but little to add in this place respecting their liability in actions ex contractu. Upon an authorized contract—that is, upon a contract within the scope of the charter or legislative powers of the corporation and duly made by the proper officers or agents—they are liable in the same manner and to the same extent as private corporations or natural persons." (Dillon on Municipal Corporations, 5th ed., sec. 1610.)

The same author says in section 1647:

"The rule of law is a general one, that the superior or employer must answer civilly for the negligence or want of skill of his agent or servant in the course or line of his employment, by which another, who is free from

contributory fault, is injured. Municipal corporations, under the conditions herein stated, fall within the operation of this rule of law, and are liable, accordingly, to civil actions for damages when the requisite elements of liability coexist. To create such liability, it is fundamentally necessary that the act done which is injurious to others must be within the scope of the corporate powers as prescribed by charter or positive enactment (the extent of which powers all persons are bound, at their peril, to know); in other words, it must not be ultra vires in the sense that it is not within the power or authority of the corporation to act in reference to it under any circumstances. If the act complained of necessarily lies wholly outside of the general or special powers of the corporation as conferred in its charter or by statute, the corporation can in no event be liable to an action for damages, whether it directly commanded the performance of the act or whether it be done by its officers without its express command; for a corporation cannot, of course, be impliedly liable to a greater extent than it could make itself by express corporate vote or action."

It often happens that the same agent or agency has both a governmental and a corporate character. Such, for instance, are a municipal water system designed both for protection against fire (a governmental function) and to supply water to the inhabitants for profit (a corporate function). (*Omaha Water Co. vs. Omaha*, 12 L. R. A., N. S., 736; 77 C. C. A., 267; 147 Fed., 1; *Judson vs. Borough of Winsted*, 80 Conn., 384; 15 L. R. A., N. S., 91); a municipal light plant both for lighting the streets (a governmental function) and for furnishing light to the inhabitants at a profit (a corporate function) (*Fisher vs. New Bern*, 140 N. C., 506; 111 Am. St. Rep., 867); an agent who is at the same time a police officer and a caretaker of a municipal toll bridge (*Woodhull vs. Mayor, etc., of New York*, 150 N. Y., 450). It is, also, sometimes the case that considerable difficulty is experienced in determining whether a particular municipal duty is governmental or corporate.

But questions such as these do not arise in the case at bar. Here it is clear that the leasing of a municipal ferry to the highest bidder for a specified period of time is not a governmental but a corporate function. Such a lease, when validly entered into, constitutes a contract with the lessee which the municipality is bound to respect. The matter is thus summed up by Dillon on Municipal Corporations (5th ed., sec. 1306):

"Ordinances made by municipalities under charter or legislative authority, containing grants to water and light companies and other public service corporations of the right to use the streets for pipes, mains, etc., upon the condition of the performance of service by the grantee, are, after acceptance and performance by the grantee, contracts protected by the prohibition of the Federal Constitution against the enactment of any State law impairing the obligation of contracts."

Again, this author, adopting the language of the court in *In re Fay* (15 Pick. [Mass.], 243), says, in section 277:

"If a municipal corporation, seized of a ferry, lease the same, through the agency of the mayor and aldermen, with a covenant of quiet enjoyment, this covenant will not restrain the mayor and aldermen from exercising the powers vested in them by statute, to license another ferry over the same waters, if in their judgment (which cannot be reviewed by the courts) the public necessity and convenience require it. On such a covenant the city may be liable to the covenantees; but the powers vested in the city officers as trustees for the public cannot be thus abrogated. If, however, the city in its corporate capacity is the legal owner, of an exclusive franchise, its grantees or lessees would hold it, notwithstanding any license to others, whether granted by the mayor and aldermen or any other tribunal."

It seems clear, therefore, that under the provisions of the Municipal Code and Act No. 1634, above referred to, the plaintiff had a vested right to the exclusive operation of the ferry in question for the period of his lease. Were the municipality a party to this action, it would be patent that a judgment for damages against it for the rescission of the contract would be proper. This, be it said, is the usual method of exacting damages, either ex contractu or ex delicto arising from the exercise of corporate powers of municipalities. But the present action is against the members of the municipal council personally, and the question arises: Are they liable? In administering the

patrimonial property of municipalities, the municipal council occupies, for most purposes, the position of a board of directors of a private corporation. In disposing of the local public utilities, if the term may be used, such as the fishing and ferry rights, etc., they must exercise considerable judgment. It requires some considerable amount of business acumen to compel performance on the part of lessees of these privileges in accordance with the terms of their leases and in a manner which will not cause the property to deteriorate. Questions must continually arise which are not expressly provided for in the contracts and which must be settled, if possible, in a manner that will preserve the just claims of the municipality. Indeed, it is not at all improbable that on occasion the councilors may have reason to believe that a particular contract has been rescinded by the other party or has never been legally entered into, in both of which cases, decisive steps must be taken to safeguard the interest of the municipality. Thus, in *Municipality of Moncada vs. Cajuigan* (21 Phil. Rep., 184), the lessee of a municipal fishery was evicted for failing to pay his quarterly rents. The municipal authorities rightly held that the contract was rescinded but forcibly evicted the lessee instead of resorting to the courts. Hence, in an action by the municipality against the lessee and his bondsmen to recover rent arrears, damages were allowed the lessee on his counterclaim for the loss caused by the forcible eviction. Nevertheless, we do not think the councilors could have been held personally liable for their error in resorting to forcible eviction of the lessee. There was an error of judgment, and honest mistake on their part as to the rights of the municipality in the premises. We think the rule of personal liability should be with municipal councilors in such matters as it is with the directors or managers of an ordinary private corporation.

"Under the rule that directors are not liable for mistakes of judgment, it follows naturally that they are not liable for the mismanagement of the corporate affairs where such mismanagement is a mistake of judgment. The wisdom of this rule is not only approved by common experience but by law writers and all courts. A rule so rigid as to hold directors personally liable for honest mistakes in corporate management would deter all prudent business men from accepting such positions. The remedy of stockholders in all such cases is by a change in the directory. * * * The rule is that courts will not interfere even in doubtful cases. But directors and managing officers may be liable for mismanagement to warrant the interposition of a court either as against the contemplated action of the directors, or a majority of the stockholders, or to give relief by way of damages after the action has been taken; a case must be made out which plainly shows that such action is so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some outside purpose, regardless of the consequences to the corporation, and in a manner inconsistent with its interests." (Thompson on Corporations, sec. 1298.)

In the case at bar, there is not a scintilla of evidence that there was any justifiable reason for forcibly evicting the plaintiff from the ferry which he had leased. On the contrary, the defendant councilors attempted to justify their action on the ground that the ferry which he was operating was not the one leased to him; this, in spite of the fact that the vice-president had personally placed him in possession of it more than a year before, and the fact that he had operated this ferry for over a year, evidently with the knowledge of the defendants. The evidence is so clear that the ferry of which the plaintiff was dispossessed was the one which he had leased that no reasonable man would entertain any doubt whatever upon the question. Hence, we cannot say that in rescinding the contract with the plaintiff, thereby making the municipality liable to an action for damages for no valid reason at all, the defendant councilors were honestly acting for the interests of the municipality. We are, therefore, of the opinion that the defendants are liable jointly and severally for the damages sustained by the plaintiff from the rescission of his contract of lease of the ferry privilege in question. In reaching this conclusion, we have not failed to take into consideration the rule enunciated in *Dennison vs. The Moro Province* (R. G. No. 8173, March 28, 1914; not reported), nor the distinction made by the courts in the United States between the liability of a municipal corporation, made such by acceptance of a village or city charter, and the involuntary quasi corporations known

as counties, towns, school districts, and especially the townships of New England. Upon the question of the amount of damages sustained, we accept the findings of the lower court.

For the foregoing reasons, the judgment appealed from is affirmed, with costs. So ordered.

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

Moreland, J., concurs in the result.

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